

Osberg v. Foot Locker, Inc., et al., 07-cv-01358 (KBF) (S.D.N.Y.)

**Class's Opposition to Defendants' Motion *in Limine*
to Exclude Testimony of Christopher Maikels**

July 10, 2015

PX1374

*GEOFFREY OSBERG VS.
FOOT LOCKER, INC.*

*JAMES GREFIG
March 27, 2012*



126 East 56th Street, Fifth Floor New York, New York 10022

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Min-U-Script® with Word Index

Page 1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x
4 GEOFFREY OSBERG, on behalf of himself and on
5 behalf of all others similarly situated,
6
7 Plaintiffs,
8
9 -against-
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11 FOOT LOCKER, INC., FOOTLOCKER RETIREMENT PLAN,
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13 Defendants.
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15 CASE NO.: 07 CV 1358(KBF)
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1221 Avenue of the Americas
New York, New York

March 27, 2012
10:16 a.m.

VIDEOTAPED DEPOSITION of JAMES
GREFIG, a non-party witness herein, pursuant to
Notice, before Ronald A. Marx, a Notary Public
of the State of New York.

ELLEN GRAUER COURT REPORTING CO. LLC
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New York, New York 10022
212-750-6434
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1 ALSO PRESENT:
2
3 LAWRENCE DEUTSCH
4
5 NICHOLAS GUZMAN, Legal Videographer

Page 3

1 ----- I N D E X -----
2 WITNESS EXAMINATION BY PAGE
3 JAMES GREFIG MR. GOTTESDIENER 8
4 MR. RUMELD 334
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25 Exhibit 104 Fax 320

Page 5				Page 7			
1	----- E X H I B I T S (Cont'd) -----			(10:20:56-10:21:34)	1	confidentiality agreement?	
2	PLAINTIFF'S DESCRIPTION FOR I.D.			2	MR. GOTTESDIENER: Yes.		
3	Exhibit 105 Final plan document	322		3	MS. WALWORTH: Thank you.		
4	Exhibit 106 Document	322		4	THE VIDEOGRAPHER: For the		
5	Exhibit 107 Document	324		5	record, will the court reporter		
6	Exhibit 108 Document	325		6	please swear in the witness?		
7	Exhibit 109 Sensitivity analysis	329		7	J A M E S G R E F I G, a non-party witness		
8	Exhibit 110 Document	330		8	herein, residing at 7 Ripley Place,		
9	Exhibit 111 Document dated 11/21/96	331		9	Croton-On-Hudson, New York 10520, having been		
10	Exhibit 112 Document	332			duly sworn by a Notary Public of the State of		
11					New York, upon being examined, testified as		
12					follows:		
13	(EXHIBITS RETAINED BY MR. GOTTESDIENER)				THE VIDEOGRAPHER: Counsel, you		
14					may proceed.		
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Page 6				Page 8			
(10:20:10-10:20:54)				(10:21:34-10:22:20)			
1	P R O C E E D I N G S			1	GREFIG		
2	THE VIDEOGRAPHER: Good			2	DIRECT EXAMINATION BY MR. GOTTESDIENER:		
3	morning. This is the beginning of			3	Q Mr. Grefig, good morning.		
4	Tape Number 1 in the videotaped			4	A Good morning.		
5	deposition of James Grefig on			5	Q Thank you for coming in. I		
6	March 27, 2012 in the matter of			6	understand it's -- well, have you ever had your		
7	Jeffrey Osberg, et al., Plaintiffs,			7	deposition taken before?		
8	versus Foot Locker, et al.,			8	A No, I have not.		
9	Defendants.			9	Q You have here an attorney that is		
10	This case is filed in the			10	representing you?		
11	United States District Court,			11	A Yes.		
12	Southern District of New York, Case			12	MS. WALWORTH: I think there's		
13	Number 07 CV 1358.			13	uncertainty.		
14	Today's deposition is being			14	MR. GOTTESDIENER: Excuse me.		
15	held at 1221 Avenue of the Americas,			15	MS. WALWORTH: The question.		
16	New York, New York 10020.			16	It's not in the form of a question.		
17	The time on the record is now			17	MR. GOTTESDIENER: I'm going to		
18	10:18 a.m. My name is Nicholas			18	stop the deposition. Let's just --		
19	Guzman. I'm the legal video			19	would you let me ask my questions?		
20	specialist. The court reporter today			20	Please don't say anything.		
21	is Ron Marx, both on behalf of Ellen			21	MS. WALWORTH: Objection as to		
22	Grauer Court Reporting.			22	form.		
23	At this time I'd ask counsel to			23	MR. GOTTESDIENER: We need to		
24	please introduce themselves for the			24	stop the deposition and get the judge		
25	record.			25	on the line.		

<p>(10:22:22-10:23:16)</p> <p>1 GREFIG</p> <p>2 You cannot say anything,</p> <p>3 nothing. The rule is Rule 30(c).</p> <p>4 The examination occurs as if it's a</p> <p>5 trial. You would not be doing this</p> <p>6 at trial.</p> <p>7 The text of the rule reads,</p> <p>8 "The examination and</p> <p>9 cross-examination of a deponent</p> <p>10 proceed as they would at trial."</p> <p>11 Will you please refrain so we</p> <p>12 do not have to stop the deposition?</p> <p>13 MS. WALWORTH: You may proceed.</p> <p>14 MR. GOTTESDIENER: Will you</p> <p>15 please agree not to say anything?</p> <p>16 MS. WALWORTH: No, I will not.</p> <p>17 MR. GOTTESDIENER: We need to</p> <p>18 the stop the deposition and call the</p> <p>19 judge.</p> <p>20 Myron, is it your position that</p> <p>21 she's able to make statements, that</p> <p>22 she's able to do what's she's doing?</p> <p>23 MR. RUMELD: Depending on what</p> <p>24 occurs. She has the witness, and</p> <p>25 she's here to represent him.</p>	<p>Page 9</p> <p>(10:24:46-10:25:34)</p> <p>1 GREFIG</p> <p>2 please -- I'm going to ask you to</p> <p>3 please reconsider and take a moment</p> <p>4 so we do not have to delay this</p> <p>5 deposition. We have a lot of</p> <p>6 material to get through.</p> <p>7 I asked him a question about</p> <p>8 he's here with his counsel. You</p> <p>9 first commented, as he hesitated,</p> <p>10 looked at you, didn't know what to</p> <p>11 say obviously, you commented I think</p> <p>12 there's some uncertainty.</p> <p>13 That's not a proper objection,</p> <p>14 and it's not a proper comment, and</p> <p>15 even if you did have the right to</p> <p>16 object, you can't say things like</p> <p>17 that.</p> <p>18 Then, seeing my reaction to it,</p> <p>19 you tried to transmogrify that into</p> <p>20 an objection and saying that you --</p> <p>21 you think you want to make an</p> <p>22 objection to the form of the</p> <p>23 question.</p> <p>24 You do not have standing to</p> <p>25 make objections to the form of the</p>
<p>(10:23:16-10:24:44)</p> <p>1 GREFIG</p> <p>2 And the one line that you read</p> <p>3 from the rule I don't find</p> <p>4 dispositive on the point you're</p> <p>5 making, any more than I found it to</p> <p>6 be dispositive of the point you tried</p> <p>7 to make at previous depositions about</p> <p>8 the right to consult with officers.</p> <p>9 And I'm just letting you know,</p> <p>10 I don't agree with your positions.</p> <p>11 So if you want to call the court,</p> <p>12 call the court.</p> <p>13 MR. GOTTESDIENER: Mr. Marx --</p> <p>14 MR. RUMELD: Let me just say</p> <p>15 that if you want to save a little</p> <p>16 time --</p> <p>17 MR. GOTTESDIENER: I just</p> <p>18 wanted to know what your position</p> <p>19 was.</p> <p>20 Mr. Marx, could you read back</p> <p>21 the question that I asked?</p> <p>22 (The requested portion was read</p> <p>23 back)</p> <p>24 MR. GOTTESDIENER: Mr. Grefig,</p> <p>25 I'm sorry about this. Ma'am,</p>	<p>Page 10</p> <p>(10:25:36-10:26:38)</p> <p>1 GREFIG</p> <p>2 question.</p> <p>3 We have a lot of material to go</p> <p>4 through. I don't want to trouble Mr.</p> <p>5 Grefig any more than he's already</p> <p>6 being troubled. I don't want to</p> <p>7 trouble myself or anyone here.</p> <p>8 Please. I will agree that your</p> <p>9 objections are noted. You reserve</p> <p>10 all of your objections, whatever they</p> <p>11 are. I have no idea what they are,</p> <p>12 but they're not relevant here today.</p> <p>13 Mr. Rumeld represents two</p> <p>14 Defendants in the case. He's a very</p> <p>15 able lawyer.</p> <p>16 Will you please agree that all</p> <p>17 of your comments are reserved, all of</p> <p>18 your objections are reserved?</p> <p>19 The only thing you could do is</p> <p>20 if there's some attorney-client</p> <p>21 privilege matter, you need to</p> <p>22 consult, the witness needs to consult</p> <p>23 with you, I will allow that, but you</p> <p>24 should not be speaking here. Will</p> <p>25 you agree or not?</p>

<p style="text-align: right;">Page 13</p> <p>(10:26:40-10:27:36)</p> <p>1 GREFIG</p> <p>2 MS. WALWORTH: Let me ask you</p> <p>3 just to clarify. You agree that all</p> <p>4 objections are reserved. Is that</p> <p>5 correct? And if that's correct, then</p> <p>6 I will agree with your request.</p> <p>7 MR. GOTTESDIENER: I agree.</p> <p>8 MS. WALWORTH: That's fine.</p> <p>9 Q Now we can start over. Good morning.</p> <p>10 A Good morning.</p> <p>11 Q You're here with your lawyer?</p> <p>12 A Yes.</p> <p>13 Q When did you first get a lawyer?</p> <p>14 A I don't know. It's my understanding</p> <p>15 that Mercer has retained my lawyer to represent</p> <p>16 me, and I guess this occurred within the past</p> <p>17 two weeks.</p> <p>18 Q Okay. I asked you, and you may have</p> <p>19 answered, have you ever had your deposition</p> <p>20 taken before?</p> <p>21 A No.</p> <p>22 Q Have you ever testified in court</p> <p>23 before?</p> <p>24 A No.</p> <p>25 Q So this process is foreign to you;</p>	<p style="text-align: right;">Page 15</p> <p>(10:28:44-10:30:14)</p> <p>1 GREFIG</p> <p>2 Q So let me just begin by asking, could</p> <p>3 you give me some biographical information?</p> <p>4 Where did you grow up, go to school?</p> <p>5 How did you come to be an actuary?</p> <p>6 A I grew up out in Southampton, Long</p> <p>7 Island, went to Fordham University.</p> <p>8 Q Undergraduate?</p> <p>9 A Undergrad.</p> <p>10 Q You're how old now?</p> <p>11 A 68.</p> <p>12 Q When did you graduate?</p> <p>13 A '65. 1965. I was on a register to</p> <p>14 be a Sandy Hook harbor pilot in New York.</p> <p>15 Q What is that?</p> <p>16 A A harbor pilot? The pilot is the</p> <p>17 individual that boards the ship outside of New</p> <p>18 York harbor and relieves the captain of his</p> <p>19 command and takes the ship into port.</p> <p>20 And I was put on a list at the age of</p> <p>21 14, and then once I graduated from college I</p> <p>22 spent two years in the U.S. Coast Guard station</p> <p>23 out of Floyd Bennett Field, search and rescue,</p> <p>24 and then was called to the boats, as the phrase</p> <p>25 goes, as an apprentice harbor pilot.</p>
<p style="text-align: right;">Page 14</p> <p>(10:27:40-10:28:42)</p> <p>1 GREFIG</p> <p>2 fair to say?</p> <p>3 A Correct.</p> <p>4 Q I would like to honestly put you at</p> <p>5 your ease, that you're just a witness in this</p> <p>6 case, that Mercer is in effect just a witness in</p> <p>7 this case. Do you understand that?</p> <p>8 A Yes.</p> <p>9 Q Do you understand that Mercer is not</p> <p>10 being sued by the Plaintiff in the case?</p> <p>11 A Yes.</p> <p>12 Q And at least as far as Plaintiff is</p> <p>13 aware, Foot Locker hasn't sued Mercer or hasn't</p> <p>14 sued you about this Woolworth conversion?</p> <p>15 A I believe the answer is yes.</p> <p>16 Q So I'm just here to try to find</p> <p>17 facts, find out what occurred, get your best</p> <p>18 recollection of things.</p> <p>19 I know it occurred awhile back. I</p> <p>20 know you also do remember things about it, and</p> <p>21 because of the magic of photocopying we have a</p> <p>22 lot of documents, so we can refresh your</p> <p>23 recollection and just get your truthful</p> <p>24 testimony, okay?</p> <p>25 A Uh-huh.</p>	<p style="text-align: right;">Page 16</p> <p>(10:30:20-10:31:42)</p> <p>1 GREFIG</p> <p>2 And having spent two years in the</p> <p>3 military, and then facing being the lowest</p> <p>4 apprentice on the list, and the BS that you go</p> <p>5 through in that environment, I resigned after a</p> <p>6 week, which caused a lot of consternation in the</p> <p>7 family. And I needed a job. So...</p> <p>8 Q And this is when you were how old?</p> <p>9 A Well, I got out of the service around</p> <p>10 21, I guess. So I had been encouraged when I</p> <p>11 was in college by the head of the math</p> <p>12 department to pursue an actuarial career.</p> <p>13 And when I first got out of college I</p> <p>14 hadn't been called to the boats yet, so I took a</p> <p>15 position over at Mutual Benefit Life, and then</p> <p>16 was drafted and then enlisted in the United</p> <p>17 States Coast Guard.</p> <p>18 So having left the pilot boat, I</p> <p>19 needed a position, and went to work at Johnson &</p> <p>20 Higgins down at Wall Street.</p> <p>21 Q So what year would that have been?</p> <p>22 A Probably December of '67.</p> <p>23 Q Okay. And how did you land that job?</p> <p>24 A I went to a head hunter in Manhattan.</p> <p>25 Q What was the job title or function?</p>

<p style="text-align: right;">Page 17</p> <p>(10:31:46-10:33:42)</p> <p>1 GREFIG</p> <p>2 A Oh. The function was actuarial</p> <p>3 technician. I don't know that we have titles.</p> <p>4 Q And so you graduated Fordham '65 and</p> <p>5 started at Johnson & Higgins December '67?</p> <p>6 A Right.</p> <p>7 Q And what did you do then?</p> <p>8 A I worked with J&H for a couple of</p> <p>9 years, and was offered and took a position with</p> <p>10 AS Hansen. Used to be Arthur Stedry Hansen.</p> <p>11 And about that time they changed to AS Hansen,</p> <p>12 and I worked in midtown Manhattan.</p> <p>13 Q And how long did you work there?</p> <p>14 A I'm trying to recollect. I think up</p> <p>15 until 1974. I think -- I think the year that</p> <p>16 ERISA passed.</p> <p>17 One of the senior individuals at AS</p> <p>18 Hansen left the organization and was allowed to</p> <p>19 attract or solicit employees of AS Hansen, even</p> <p>20 though he started his own firm.</p> <p>21 So at first I didn't accept the</p> <p>22 offer, and then late '74 -- later in '74 I took</p> <p>23 that position.</p> <p>24 '74 until, I'm guessing, 1977 I</p> <p>25 worked for Dreher Rogers & Associates. Rodgers</p>	<p style="text-align: right;">Page 19</p> <p>(10:35:24-10:36:44)</p> <p>1 GREFIG</p> <p>2 There was a lot of merger and</p> <p>3 acquisition work. Actually I had -- I was an</p> <p>4 advisor to the Penn Central trustees in the</p> <p>5 early '70s.</p> <p>6 There was a lot of merger acquisition</p> <p>7 work in the '70s going into the 1980s.</p> <p>8 Companies decided that being a conglomerate</p> <p>9 wasn't in their best interests, and they'd be</p> <p>10 better off focusing on their core business, so</p> <p>11 there was a lot of divestiture work during the</p> <p>12 '80s.</p> <p>13 And then I just got a sense that that</p> <p>14 business itself was more and more constrained</p> <p>15 by regulations and new laws, that we were less</p> <p>16 of financial consulting than we were compliance</p> <p>17 consultants.</p> <p>18 And after a period of 30 years, you</p> <p>19 know, decided I wanted to do something</p> <p>20 different.</p> <p>21 So I left. I went back to graduate</p> <p>22 school and never finished. I was pursuing a</p> <p>23 degree in environmental science, did not</p> <p>24 complete that, was dissatisfied with the course</p> <p>25 curriculum. They were training -- trying to</p>
<p style="text-align: right;">Page 18</p> <p>(10:33:50-10:35:22)</p> <p>1 GREFIG</p> <p>2 left the organization. We sold the company to</p> <p>3 Peat Marwick Mitchell & Company.</p> <p>4 I was against the sale, but didn't --</p> <p>5 you know, I was a minority stockholder. Agreed</p> <p>6 to give it a try, stayed with Peat Marwick</p> <p>7 Mitchell for a year, and then left and went back</p> <p>8 to AS Hansen, with a short stint at Buck.</p> <p>9 Q In between or --</p> <p>10 A Yeah. It was -- like I left Peat</p> <p>11 Marwick Mitchell. I went to Buck for six</p> <p>12 months. I didn't like their structure.</p> <p>13 I went back to Hansen, stayed with</p> <p>14 Hansen until 1987, when I joined Mercer. And</p> <p>15 then early '87 Mercer turned around and bought</p> <p>16 AS Hansen.</p> <p>17 Stayed with Mercer's New York office</p> <p>18 until 1984, and I transferred up to the Stamford</p> <p>19 office, and then retired 1998.</p> <p>20 Q So you were how old when you retired?</p> <p>21 A 54.</p> <p>22 Q Why did you retire when you did?</p> <p>23 A I've been doing this for over</p> <p>24 30 years. And if you look back at the business,</p> <p>25 19 -- 1970s were -- were good.</p>	<p style="text-align: right;">Page 20</p> <p>(10:36:46-10:38:06)</p> <p>1 GREFIG</p> <p>2 train lab technicians as opposed to</p> <p>3 environmentalists.</p> <p>4 And in the interim I served as chair</p> <p>5 of the 4H youth and family development committee</p> <p>6 of Cornell Cooperative Extension, Westchester.</p> <p>7 I served a couple of years on the</p> <p>8 Westchester County Best Management Committee,</p> <p>9 which was a committee that reported to the board</p> <p>10 of legislators.</p> <p>11 I served on the board of directors of</p> <p>12 Cornell Cooperative Extension on the finance</p> <p>13 committee. I'm a bee keeper.</p> <p>14 Q I was going to say that somebody in</p> <p>15 my office tried to find you on the Internet and</p> <p>16 found something. Something about bees. And</p> <p>17 what does that entail?</p> <p>18 A That's where you found me on the</p> <p>19 Internet?</p> <p>20 Q Somebody said you're a bee keeper.</p> <p>21 Is that a hobby that you have?</p> <p>22 A Yes. It's a -- it's a hobby. It's a</p> <p>23 pastime. I had -- you know Ripley Place</p> <p>24 Apiaries. And I'm also a ham radio operator.</p> <p>25 How I got involved in bee keeping, I</p>

<p style="text-align: right;">Page 21</p> <p>(10:38:08-10:39:28)</p> <p>1 GREFIG</p> <p>2 was also a master gardener with Cornell</p> <p>3 Cooperative Extension, Westchester County.</p> <p>4 And we held a fair every year at</p> <p>5 Muscoot Farm, which is a county-owned farm. And</p> <p>6 one of my fellow master gardeners was a bee</p> <p>7 keeper and had been for decades, and he put on a</p> <p>8 presentation.</p> <p>9 And I thought -- I found it</p> <p>10 interesting. So I went out. I bought a couple</p> <p>11 of books. I read the books, ordered equipment,</p> <p>12 and following year set up honeybee hives in my</p> <p>13 backyard.</p> <p>14 Q How many hives do you have?</p> <p>15 A Well, in -- at my location I had -- I</p> <p>16 had five standard hives, the kind of hives that</p> <p>17 you see when you're driving down the roadway,</p> <p>18 and I had one topper hive, which is a type of</p> <p>19 hive that they use in Africa, southeast Asia,</p> <p>20 but I also managed hives on an estate in North</p> <p>21 Salem for a period of years.</p> <p>22 But now I'm down to one hive. I</p> <p>23 mean, I -- and mentoring one new bee keeper from</p> <p>24 Somers.</p> <p>25 Q So I have a sense of what you've seen</p>	<p style="text-align: right;">Page 23</p> <p>(10:41:04-10:42:12)</p> <p>1 GREFIG</p> <p>2 Q You have?</p> <p>3 A Yes.</p> <p>4 Q Okay. When was that?</p> <p>5 A Last Friday.</p> <p>6 Q Okay. Can you tell me how that came</p> <p>7 about?</p> <p>8 MS. WALWORTH: Objection. I'm</p> <p>9 just going to instruct you not to</p> <p>10 state anything that I said to you or</p> <p>11 Mr. Keough said to you.</p> <p>12 Q Other than that, I'm just -- how did</p> <p>13 it come about?</p> <p>14 A What are my -- what are my options?</p> <p>15 I mean --</p> <p>16 Q Let me -- you received the subpoena,</p> <p>17 and then you spoke to Steve Cohen?</p> <p>18 A Steve Cohen.</p> <p>19 Q And you had a conversation with him</p> <p>20 and you talked about the conversion as well as</p> <p>21 the process of being deposed?</p> <p>22 A Well, we actually didn't talk about</p> <p>23 the process of being deposed. I said what is</p> <p>24 this about, and he said it had to do with the</p> <p>25 cash balance plan.</p>
<p style="text-align: right;">Page 22</p> <p>(10:39:34-10:41:04)</p> <p>1 GREFIG</p> <p>2 in the past month or so, if anything, could you</p> <p>3 tell me, since you first received a subpoena to</p> <p>4 testify here, have you looked at any documents</p> <p>5 from the Woolworth conversion?</p> <p>6 A No. Absolutely nothing.</p> <p>7 Q Not a single one?</p> <p>8 A Not a single one. And I told Steve</p> <p>9 Cohen when I spoke to him on the phone -- he's a</p> <p>10 colleague of yours?</p> <p>11 Q Yes.</p> <p>12 A That the only thing I really remember</p> <p>13 about this project was that one of my colleagues</p> <p>14 designed the formula, and I reviewed the formula</p> <p>15 for compliance with the benefit accrual rules</p> <p>16 under ERISA.</p> <p>17 That's what comes to mind. Other</p> <p>18 than that, I don't have a recollection of</p> <p>19 details.</p> <p>20 Q You -- have you met with counsel for</p> <p>21 Foot Locker, formerly Woolworth?</p> <p>22 A Who's counsel for Foot Locker?</p> <p>23 Q The gentleman sitting over there</p> <p>24 (indicating).</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 24</p> <p>(10:42:14-10:43:16)</p> <p>1 GREFIG</p> <p>2 And I said that's a long time ago. I</p> <p>3 said the only thing I remember is -- sticks out</p> <p>4 in my mind, and why it does I have no idea, but</p> <p>5 one of my colleagues designed a formula. I</p> <p>6 reviewed it and, you know, that's what</p> <p>7 immediately came to mind.</p> <p>8 Subsequent to my conversation with</p> <p>9 him, I got a call from Allison -I forget her</p> <p>10 last name- at -- at Marsh & McClennan.</p> <p>11 MS. WALWORTH: Please don't say</p> <p>12 what Ms. Brecher said to you, but you</p> <p>13 can state there was a call.</p> <p>14 A And then -- and that there was -- she</p> <p>15 called me. And that --</p> <p>16 Q Then after she called you, did you do</p> <p>17 anything?</p> <p>18 A No.</p> <p>19 Q Okay. You didn't go -- did you meet</p> <p>20 with Mr. Rumeld in his office?</p> <p>21 A No.</p> <p>22 Q Did you speak with him on the phone?</p> <p>23 A No.</p> <p>24 Q Did you meet with him at some other</p> <p>25 location?</p>

<p style="text-align: right;">Page 25</p> <p>(10:43:18-10:44:06)</p> <p>1 GREFIG</p> <p>2 A Yes.</p> <p>3 Q What location?</p> <p>4 A My home.</p> <p>5 Q Your home?</p> <p>6 A Yes.</p> <p>7 Q Okay. Mr. Rumeld came to your home?</p> <p>8 A Yes.</p> <p>9 Q Did he come alone?</p> <p>10 A Yes.</p> <p>11 Q Was there anyone on speaker phone</p> <p>12 listening in, as far as you're aware?</p> <p>13 A No.</p> <p>14 Q So it was just Mr. Rumeld and</p> <p>15 yourself?</p> <p>16 A And my counsel --</p> <p>17 Q Okay. So the --</p> <p>18 A -- was present.</p> <p>19 Q The three of you were at your home</p> <p>20 speaking?</p> <p>21 A Yes.</p> <p>22 Q Okay. And how long did that</p> <p>23 conversation last?</p> <p>24 A An hour and a half and maybe an hour.</p> <p>25 Q An hour and a half?</p>	<p style="text-align: right;">Page 27</p> <p>(10:45:04-10:46:12)</p> <p>1 GREFIG</p> <p>2 not going to allow any questions on</p> <p>3 attorney-client privilege grounds?</p> <p>4 MR. RUMELD: That's correct. I</p> <p>5 mean, Carla is representing him</p> <p>6 today, so I suppose it's your</p> <p>7 instruction, but I think that was the</p> <p>8 understanding before the meeting took</p> <p>9 place.</p> <p>10 MS. WALWORTH: I agree with</p> <p>11 you. I agree with your position on</p> <p>12 privilege.</p> <p>13 I'm asking you to assert it,</p> <p>14 given the agreement on the objections</p> <p>15 I have. If I have any disagreement</p> <p>16 I'll let you know.</p> <p>17 Q While the three of you were speaking,</p> <p>18 was Mr. Rumeld taking any notes?</p> <p>19 A I -- I don't know -- I didn't make</p> <p>20 note of it myself.</p> <p>21 Q Was your lawyer taking notes?</p> <p>22 A My lawyer had her colleague Owen with</p> <p>23 her.</p> <p>24 Q Then I misunderstood your previous</p> <p>25 testimony. I'm sorry. I just want to -- your</p>
<p style="text-align: right;">Page 26</p> <p>(10:44:06-10:45:04)</p> <p>1 GREFIG</p> <p>2 A All -- all parties didn't show up at</p> <p>3 the same time.</p> <p>4 Q Okay. Your counsel arrived first?</p> <p>5 A My counsel arrived. It was</p> <p>6 conversation, and later that day we had another</p> <p>7 conversation.</p> <p>8 Q Okay. So you and your counsel met</p> <p>9 for approximately how long?</p> <p>10 A I would say an hour and a half.</p> <p>11 Q And then --</p> <p>12 A I think.</p> <p>13 Q All right. And subsequent to that</p> <p>14 the three of you met, Mr. Rumeld, you and your</p> <p>15 lawyer?</p> <p>16 A Uh-huh.</p> <p>17 Q How long was that meeting?</p> <p>18 A About an hour.</p> <p>19 Q About an hour you said?</p> <p>20 A I believe so.</p> <p>21 Q And what did Mr. Rumeld say?</p> <p>22 MR. RUMELD: Objection. That</p> <p>23 meeting took place pursuant to a</p> <p>24 joint defense agreement.</p> <p>25 MR. GOTTESDIENER: So you're</p>	<p style="text-align: right;">Page 28</p> <p>(10:46:14-10:47:34)</p> <p>1 GREFIG</p> <p>2 previous testimony you needed to add not just</p> <p>3 one counsel. You had two lawyers?</p> <p>4 A Okay. Okay. Two. Right.</p> <p>5 Q Is that --</p> <p>6 A I believe he may have been taking</p> <p>7 notes.</p> <p>8 Q And you're saying that at no time did</p> <p>9 anybody show you any documents?</p> <p>10 A No. I haven't seen -- no documents</p> <p>11 whatsoever.</p> <p>12 Q Okay. And you haven't -- when did</p> <p>13 this occur?</p> <p>14 A The meeting?</p> <p>15 Q Yes. You said Friday?</p> <p>16 A Last Friday.</p> <p>17 Q Last Friday. Okay. And since then</p> <p>18 have you spoken with anyone about the matter?</p> <p>19 A Absolutely no one.</p> <p>20 Q Okay. You mentioned a colleague.</p> <p>21 Was that Jim Cassidy?</p> <p>22 A Yes, it was.</p> <p>23 Q And tell me, you were at Mercer you</p> <p>24 said from '84 -- '86?</p> <p>25 A '86.</p>

<p style="text-align: right;">Page 29</p> <p>(10:47:34-10:49:04)</p> <p>1 GREFIG</p> <p>2 Q To '98?</p> <p>3 A Correct.</p> <p>4 Q And when did you become involved in</p> <p>5 doing any work for Woolworth?</p> <p>6 A I joined Mercer in '86. And I don't</p> <p>7 know whether I was introduced to the client in</p> <p>8 '86 or whether I became involved with the client</p> <p>9 as an actuary say in '87. I believe there --</p> <p>10 client may have been on a calendar year.</p> <p>11 So there would have been a valuation</p> <p>12 done on January 1, 1987, and that might have</p> <p>13 been the first time that I had contact with the</p> <p>14 client as -- as an actuary.</p> <p>15 Q As opposed to?</p> <p>16 A As opposed to a consultant or, you</p> <p>17 know, a member of the team.</p> <p>18 Q What do you mean by the team?</p> <p>19 A Well, the way the firm is structured</p> <p>20 you -- the way Mercer is structured, there is</p> <p>21 a -- a client manager, relationship manager, and</p> <p>22 then the various practice areas within Mercer.</p> <p>23 There's a health and welfare</p> <p>24 practice, so there would be a senior actuary</p> <p>25 in the health and welfare practice that would</p>	<p style="text-align: right;">Page 31</p> <p>(10:50:24-10:53:48)</p> <p>1 GREFIG</p> <p>2 and welfare actuary.</p> <p>3 Q Who was that?</p> <p>4 A Steve Putterman.</p> <p>5 Q Okay.</p> <p>6 A And then depending upon what other</p> <p>7 services Mercer offered, there would be other</p> <p>8 people who would take a lead position in that</p> <p>9 practice area, but I was never the client</p> <p>10 manager for Woolworth.</p> <p>11 (Exhibit 68, letter, was marked</p> <p>12 for identification, as of this date.)</p> <p>13 Q Let me show you what I'm going to</p> <p>14 mark as Exhibit 68. Turning your attention to</p> <p>15 Page 6, would you agree that Exhibit 68 is a</p> <p>16 multi-page document that is -- started off with</p> <p>17 a two-page letter from Paulette Welsing that</p> <p>18 attaches a Mercer May 1995 proposal?</p> <p>19 A So starting at the first page of this</p> <p>20 document?</p> <p>21 Q The first two -- yes. The first two</p> <p>22 pages consist of a letter to Thomas Kiley at</p> <p>23 Woolworth dated May 25, 1995. Are you able to</p> <p>24 answer that question?</p> <p>25 A No. I'm sorry. What was the</p>
<p style="text-align: right;">Page 30</p> <p>(10:49:04-10:50:20)</p> <p>1 GREFIG</p> <p>2 have been assigned to the Woolworth account.</p> <p>3 And then there'd be an actuary from</p> <p>4 the retirement practice assigned to the</p> <p>5 Woolworth account. And then it's not clear in</p> <p>6 my mind whether that assignment came about in</p> <p>7 1986 or 1987.</p> <p>8 Q The assignment that you were --</p> <p>9 A The enrolled actuary for the plan.</p> <p>10 Q In the retirement practice?</p> <p>11 A In the retirement practice, correct.</p> <p>12 Q And you became the client manager at</p> <p>13 some point with Woolworth?</p> <p>14 A Never the client manager. Never the</p> <p>15 client manager. The client manager was Mark</p> <p>16 Brandes.</p> <p>17 And while he -- he was -- the reason</p> <p>18 I'm saying, he had a stroke. I don't know what</p> <p>19 his current status is.</p> <p>20 He was designated within the office</p> <p>21 as the client manager, the client relationship</p> <p>22 manager. Sometimes you heard that expression.</p> <p>23 And then I was the actuary for the</p> <p>24 Woolworth retirement plan. And there was</p> <p>25 another actuary, another FSA, who was the health</p>	<p style="text-align: right;">Page 32</p> <p>(10:53:50-10:54:36)</p> <p>1 GREFIG</p> <p>2 question?</p> <p>3 Q Are you able to tell me if in fact</p> <p>4 that's a two-page letter?</p> <p>5 A It's a two-page letter. Right.</p> <p>6 Q From --</p> <p>7 A Cover letter on --</p> <p>8 Q From Paulette Welsing?</p> <p>9 A From Paulette Welsing. Right.</p> <p>10 Q Who was she?</p> <p>11 A She was in the communication</p> <p>12 practice.</p> <p>13 Q In the New York office?</p> <p>14 A I don't know. I don't remember.</p> <p>15 Where did this come from? No. This came from</p> <p>16 Tressor Bulghorn (phonetic) in Stamford,</p> <p>17 Connecticut.</p> <p>18 Q And that's where you were located?</p> <p>19 A Correct. At that time in 19 -- yes.</p> <p>20 In 1994 I transferred up to the -- the Stamford</p> <p>21 office.</p> <p>22 Q That's where you remained until '98?</p> <p>23 A Correct. Right.</p> <p>24 Q And if you look at this document, it</p> <p>25 appears to be what she's describing in the cover</p>

<p style="text-align: right;">Page 33</p> <p>(10:54:40-10:56:52)</p> <p>1 GREFIG</p> <p>2 letter that you read to Mr. Kiley.</p> <p>3 Are you able to answer the question,</p> <p>4 whether it appears to be the document that's</p> <p>5 attached, what she's describing in the letter, a</p> <p>6 proposal to provide administrative services for</p> <p>7 cash balance and 401(k) plan?</p> <p>8 A It appears to be a letter. Right.</p> <p>9 Q Okay. Great. So --</p> <p>10 A Covering a proposal.</p> <p>11 Q Okay. And by 1995, May, you would</p> <p>12 have been working on the Woolworth pension plan</p> <p>13 for several years; is that fair?</p> <p>14 A Oh, yes. Right.</p> <p>15 Q So when you became involved as an</p> <p>16 actuary in '87, your involvement was continuous</p> <p>17 from that time until the cash balance conversion</p> <p>18 design got underway?</p> <p>19 A Yes.</p> <p>20 Q Okay. So all of this was leading up</p> <p>21 to asking you to take a look at Page 6, and see</p> <p>22 if that refreshes your recollection as to --</p> <p>23 that maybe you were the client manager by this</p> <p>24 time?</p> <p>25 A No. I was never the client manager.</p>	<p style="text-align: right;">Page 35</p> <p>(10:58:20-10:59:28)</p> <p>1 GREFIG</p> <p>2 he was a worldwide partner I think what his</p> <p>3 title was.</p> <p>4 Q Which means -- at the time it meant?</p> <p>5 A Well, it meant that he was -- I was a</p> <p>6 principal, and then the next step above that is</p> <p>7 worldwide partners. It's a title.</p> <p>8 And I think you earned that title</p> <p>9 based on the amount of revenue that you're</p> <p>10 controlling, I believe. Okay? So...</p> <p>11 Q Did Mark do any day-to-day work on</p> <p>12 the plan?</p> <p>13 A On the plan?</p> <p>14 Q Yes.</p> <p>15 A No. Just a client relationship</p> <p>16 manager.</p> <p>17 Q Well, he was involved not at all, a</p> <p>18 little bit in the design of the cash balance</p> <p>19 plan?</p> <p>20 A I don't remember him being involved.</p> <p>21 Q Going to meetings with the client and</p> <p>22 lawyers for the client and actuaries?</p> <p>23 A No. I don't remember him being</p> <p>24 involved at all.</p> <p>25 Q And am I understanding that looking</p>
<p style="text-align: right;">Page 34</p> <p>(10:56:56-10:58:10)</p> <p>1 GREFIG</p> <p>2 I'd like to read this to see how in the text she</p> <p>3 categorizes this team that was put together.</p> <p>4 Q Could I -- could I suggest that I</p> <p>5 don't necessarily need you to read all that.</p> <p>6 Maybe we can get to a place where</p> <p>7 we're both comfortable if I ask you a question?</p> <p>8 A Go ahead.</p> <p>9 Q Did this proposal as far as you're</p> <p>10 aware ever get implemented in any form?</p> <p>11 A I don't know. I don't -- I don't</p> <p>12 recall ever having seen this proposal, to be</p> <p>13 honest with you.</p> <p>14 As I -- the -- the practice areas at</p> <p>15 Mercer operated autonomously. In other words, I</p> <p>16 was the senior actuary for the retirement plan</p> <p>17 in the retirement practice.</p> <p>18 And we had Steve Putterman, who was</p> <p>19 the senior guy over at health and welfare, and</p> <p>20 Mark Brandes was the one that maintained an</p> <p>21 ongoing client relationship management position</p> <p>22 with the client. That's why he was designated</p> <p>23 within our structure as the client manager.</p> <p>24 Q Well, was he in a practice group?</p> <p>25 A Not really. He was -- he was in --</p>	<p style="text-align: right;">Page 36</p> <p>(10:59:32-11:00:32)</p> <p>1 GREFIG</p> <p>2 at 6, Page 6, you're essentially saying that</p> <p>3 Paulette is mistaken if she's describing you in</p> <p>4 that way?</p> <p>5 A As with that title, that's correct.</p> <p>6 I'm not a client manager within the Mercer</p> <p>7 establishment. I was not a client manager.</p> <p>8 Q How -- but functionally. Did you</p> <p>9 functionally serve as the main point of contact</p> <p>10 that Woolworth had with Mercer for the</p> <p>11 retirement plan?</p> <p>12 A For the retirement plan?</p> <p>13 Q Yes.</p> <p>14 A Probably the primary contact, yes.</p> <p>15 Q And you said you were the senior</p> <p>16 actuary in the retirement practice?</p> <p>17 A Correct. For Woolworth, right.</p> <p>18 Q For the Woolworth plan?</p> <p>19 A Correct.</p> <p>20 Q And you were the enrolled actuary for</p> <p>21 the plan?</p> <p>22 A Yes.</p> <p>23 Q So you were responsible for the</p> <p>24 day-to-day handling of Woolworth's plan-related</p> <p>25 needs?</p>

<p style="text-align: right;">Page 37</p> <p>(11:00:34-11:01:32)</p> <p>1 GREFIG</p> <p>2 A Clearly the actuarial needs, yes.</p> <p>3 Q Yes.</p> <p>4 A Now -- but beyond that, no. I</p> <p>5 don't -- see, this proposal --</p> <p>6 Q I don't want to necessarily -- I</p> <p>7 don't want to stop you from saying what you're</p> <p>8 going to say, but I need you to understand that</p> <p>9 I'm not -- the proposal is just a proposal.</p> <p>10 That's as far as you're aware. You don't think</p> <p>11 it ever was adopted?</p> <p>12 MR. RUMELD: Objection to the</p> <p>13 form.</p> <p>14 A I don't believe so.</p> <p>15 Q Let me ask it again. Did Mercer</p> <p>16 while you were there ever provide these kinds of</p> <p>17 administrative services for the cash balance</p> <p>18 plan and the 401(k) plan?</p> <p>19 MR. RUMELD: I object to the</p> <p>20 form.</p> <p>21 MR. GOTTESDIENER: I didn't</p> <p>22 finish my question.</p> <p>23 MR. RUMELD: Sorry.</p> <p>24 Q Did Mercer provide any administrative</p> <p>25 services while you were there for the cash</p>	<p style="text-align: right;">Page 39</p> <p>(11:03:00-11:04:38)</p> <p>1 GREFIG</p> <p>2 enrolled actuary for the plan itself?</p> <p>3 A Yes.</p> <p>4 Q And that was the case throughout the</p> <p>5 time that you were involved with the account?</p> <p>6 A Yes.</p> <p>7 Q Okay. Let me show you 69, and ask</p> <p>8 you if you could tell me if this is the</p> <p>9 valuation for the plan for 1994.</p> <p>10 (Exhibit 69, 1994 valuation</p> <p>11 plan, was marked for identification,</p> <p>12 as of this date.)</p> <p>13 Q Does that appear to be what it is?</p> <p>14 A That's that it appears to be.</p> <p>15 Q If you would turn to what is Page 3</p> <p>16 in the right-hand corner. You're on it now,</p> <p>17 right?</p> <p>18 A Yes.</p> <p>19 Q Okay. You see your signature there</p> <p>20 as principal FSA EA, right?</p> <p>21 A Correct.</p> <p>22 Q Mr. Brandes is on here signing,</p> <p>23 saying that he has reviewed and found acceptable</p> <p>24 the actuarial assumptions, methods and</p> <p>25 procedures used in preparing this actuarial</p>
<p style="text-align: right;">Page 38</p> <p>(11:01:34-11:02:56)</p> <p>1 GREFIG</p> <p>2 balance plan?</p> <p>3 A Not that I remember. I don't -- I</p> <p>4 don't remember this proposal, and I don't</p> <p>5 remember that anything ever came to this.</p> <p>6 Q Let me take this away from you, okay?</p> <p>7 Because I don't need you to stare at it. I</p> <p>8 just -- I need -- whatever you can recall using</p> <p>9 documents, we'll get your testimony, okay?</p> <p>10 A Uh-huh.</p> <p>11 Q So my question is, on a day-to-day</p> <p>12 basis, prior to the conversion and immediately</p> <p>13 after the conversion, what was Mercer doing</p> <p>14 actuarially with respect to the Woolworth plan?</p> <p>15 A We performed the actuarial -- I</p> <p>16 always hated that word. We completed the</p> <p>17 actuarial valuations for funding, and somewhere</p> <p>18 along the line expense purposes.</p> <p>19 I forget exactly when the FASB</p> <p>20 requirements came into effect. FASB, Financial</p> <p>21 Accounting Standards Board, accounting</p> <p>22 requirements came in.</p> <p>23 Q So -- I'm sorry. And what else --</p> <p>24 that was -- so Mercer was acting both with</p> <p>25 respect to the plan for the sponsor as well as</p>	<p style="text-align: right;">Page 40</p> <p>(11:04:40-11:05:50)</p> <p>1 GREFIG</p> <p>2 valuation?</p> <p>3 A Yes.</p> <p>4 Q Does this refresh your recollection</p> <p>5 that Mr. Brandes did have involvement</p> <p>6 substantively with the actuarial work required</p> <p>7 for the plan?</p> <p>8 A No. We had -- what he's signing off</p> <p>9 here as -- is he's a peer reviewer.</p> <p>10 Q Peer review?</p> <p>11 A Peer review, right. That what he's</p> <p>12 saying, he's found acceptable the assumptions,</p> <p>13 methods and procedures used in preparing this</p> <p>14 valuation. Now --</p> <p>15 Q So he wasn't just a rain-maker?</p> <p>16 A No, no. According to this he's more</p> <p>17 rain-maker than he was involved in the</p> <p>18 production of the valuation. Yes.</p> <p>19 But obviously for purposes of</p> <p>20 completing the document, he did a peer review on</p> <p>21 the document.</p> <p>22 Q And because you're under oath, I just</p> <p>23 want to ask you to be candid.</p> <p>24 Is this something that he, you know,</p> <p>25 just signed? Did you know that he actually</p>

<p style="text-align: right;">Page 41</p> <p>(11:05:56-11:06:50)</p> <p>1 GREFIG</p> <p>2 provided a real peer review?</p> <p>3 MR. RUMELD: I object to the</p> <p>4 form.</p> <p>5 MR. GOTTESDIENER: I'll</p> <p>6 withdraw the question.</p> <p>7 Q Did he really do a peer review when</p> <p>8 he signed this?</p> <p>9 A The -- the documents that were made</p> <p>10 available to him to perform the peer review. I</p> <p>11 didn't stand over him to make sure that he did</p> <p>12 what I would have done if I had done it myself,</p> <p>13 but certainly the materials were available to</p> <p>14 him.</p> <p>15 Q But you don't know for a fact that he</p> <p>16 actually did what you would consider a peer</p> <p>17 review?</p> <p>18 A That's correct. I could not -- I</p> <p>19 could not sit here and say yeah, I know he did</p> <p>20 it, because, number one, it's quite a number of</p> <p>21 years ago.</p> <p>22 And two, it -- it wasn't done in a --</p> <p>23 in a manner in which I -- I sat down and watched</p> <p>24 him go through the procedures.</p> <p>25 Q Well, you know, I'm kind of getting</p>	<p style="text-align: right;">Page 43</p> <p>(11:07:42-11:08:38)</p> <p>1 GREFIG</p> <p>2 MR. RUMELD: Objection to form.</p> <p>3 A I don't know. I cannot testify that</p> <p>4 he did what I would do when I perform peer</p> <p>5 reviews.</p> <p>6 Q In your estimation, from what you</p> <p>7 knew of him at the time, he was not involved at</p> <p>8 that level of detail?</p> <p>9 A Correct.</p> <p>10 MR. RUMELD: I object to the</p> <p>11 form.</p> <p>12 A Let me -- there are other cases in</p> <p>13 the -- in the -- in the office where, you know,</p> <p>14 I might have had however many clients that were</p> <p>15 unique to me, but I was called upon to peer</p> <p>16 review reports that -- for clients where I</p> <p>17 wasn't involved.</p> <p>18 Q And so I'm not sure I understand.</p> <p>19 How does that relate to what you think Mark</p> <p>20 Brandes would have done?</p> <p>21 A The fact that Mark's signature shows</p> <p>22 up on here kind of distracts from the peer</p> <p>23 review process that every valuation was required</p> <p>24 to be subjected to.</p> <p>25 And in order to get a peer review</p>
<p style="text-align: right;">Page 42</p> <p>(11:06:52-11:07:40)</p> <p>1 GREFIG</p> <p>2 at something else, which is that him doing this</p> <p>3 peer review is not consistent with the way that</p> <p>4 you thought of him then and think of him now in</p> <p>5 terms of his involvement with the plan.</p> <p>6 MR. RUMELD: I object to the</p> <p>7 form.</p> <p>8 Q Isn't that correct? You can answer</p> <p>9 the question.</p> <p>10 A Please repeat it.</p> <p>11 Q You know, what I'm getting is that</p> <p>12 you're a little surprised to see that he signed</p> <p>13 that, doing a peer review.</p> <p>14 That's not how you think and thought</p> <p>15 of him at that time?</p> <p>16 A I'm not -- no. I'm not surprised to</p> <p>17 see his signature in here on the peer review.</p> <p>18 That doesn't surprise me at all. I didn't mean</p> <p>19 to --</p> <p>20 Q Let me ask a different way. You're</p> <p>21 not surprised by seeing his signature on the</p> <p>22 peer review, but you agree that from what you</p> <p>23 knew of Mark, he didn't do what you would do if</p> <p>24 you had done a peer review?</p> <p>25 A I don't know.</p>	<p style="text-align: right;">Page 44</p> <p>(11:08:42-11:10:38)</p> <p>1 GREFIG</p> <p>2 performed, completed, you didn't necessarily</p> <p>3 have to have someone who was particularly</p> <p>4 involved with the client to do a peer review.</p> <p>5 So in this case, turned out to be Mark. Could</p> <p>6 have been someone else.</p> <p>7 Q So what would you have expected him</p> <p>8 to have done if he had done a proper peer view?</p> <p>9 A Well, a work sheet file. Look over</p> <p>10 the summary of the work sheets that were in the</p> <p>11 files.</p> <p>12 And given that this is so many years</p> <p>13 ago, I'm sure that my list is going to be</p> <p>14 incomplete, because, you know, look at the</p> <p>15 reasonableness of the assumptions, which would</p> <p>16 include the investment return assumption,</p> <p>17 consistency with the prior years valuation</p> <p>18 results, reasonableness of the other economic</p> <p>19 assumptions relative to, you know, like</p> <p>20 compensation. Is that reasonable. Has it been</p> <p>21 changed since the prior year. Have there been</p> <p>22 any unusual exchanges, say, in the demographics</p> <p>23 of the population that need explanation, any</p> <p>24 significant change in the -- you know, to say</p> <p>25 that the demographics of the population in terms</p>

<p style="text-align: right;">Page 45</p> <p>(11:10:40-11:12:02)</p> <p>1 GREFIG</p> <p>2 of number of terminations that year, number of</p> <p>3 retirements that year, number of new entrants,</p> <p>4 you know.</p> <p>5 With a population this large, you</p> <p>6 expect certain stability in the demographics, so</p> <p>7 that's one thing that you would look at.</p> <p>8 Q What if there had been a major plan</p> <p>9 amendment? What would you have expected him to</p> <p>10 do?</p> <p>11 A If there was a major plan amendment</p> <p>12 there would have been prior estimates of the</p> <p>13 cost of the plan amendment.</p> <p>14 Q What --</p> <p>15 A So you just look at the contrast, the</p> <p>16 estimates that were prepared with the final</p> <p>17 results. With this size population you expect a</p> <p>18 great deal of stability in the demographics.</p> <p>19 Q So you would expect, if you were</p> <p>20 doing a peer review, to see that the cost</p> <p>21 estimate of the major plan amendment was pretty</p> <p>22 much in line with what occurred?</p> <p>23 A Right.</p> <p>24 Q The -- and who else is on that third</p> <p>25 page?</p>	<p style="text-align: right;">Page 47</p> <p>(11:13:22-11:14:18)</p> <p>1 GREFIG</p> <p>2 arrived.</p> <p>3 Q Okay.</p> <p>4 A So he --</p> <p>5 Q Did you have any contact with him</p> <p>6 before then?</p> <p>7 A No. No. Not unless it was at a --</p> <p>8 at a practice meeting or something like that.</p> <p>9 MS. WALWORTH: Mr. Grefig,</p> <p>10 could I ask you to let Mr.</p> <p>11 Gottesdiener finish his question</p> <p>12 before you answer, and he'll do the</p> <p>13 same for you. I know it's difficult</p> <p>14 to do that during a deposition.</p> <p>15 Q So Mr. Cassidy, was he -- you were</p> <p>16 working on a continuous basis on the retirement</p> <p>17 plan from '87 to when you left?</p> <p>18 A Correct.</p> <p>19 Q When did he first render services</p> <p>20 with respect to the retirement plan?</p> <p>21 A Most likely on or about the year that</p> <p>22 I moved to Stamford.</p> <p>23 Q Prior to 1994, when you moved to</p> <p>24 Stamford, who was performing functions that Mr.</p> <p>25 Cassidy then began performing?</p>
<p style="text-align: right;">Page 46</p> <p>(11:12:02-11:13:18)</p> <p>1 GREFIG</p> <p>2 A Carla Edelstein.</p> <p>3 Q Can you tell me who she is?</p> <p>4 A No. She's a fellow of the Canadian</p> <p>5 Institute of Actuaries. I recognize the name,</p> <p>6 but I don't know where she was.</p> <p>7 I don't know whether she was in</p> <p>8 Stamford, New York or -- I mean, we talk about</p> <p>9 Mark. I have an image in the New York office of</p> <p>10 where his office was relative to mine.</p> <p>11 I haven't the -- I have no</p> <p>12 recollection of where Carla Edelstein's office</p> <p>13 was relative to mine, but I do recognize the</p> <p>14 name.</p> <p>15 Q So you were in the New York office</p> <p>16 from '86 to '94?</p> <p>17 A Correct.</p> <p>18 Q And where was Jim Cassidy during that</p> <p>19 time? Was he with Mercer?</p> <p>20 A He was with Mercer in the Stamford</p> <p>21 office.</p> <p>22 Q Throughout that time?</p> <p>23 A Oh. I don't know throughout -- we're</p> <p>24 going from my -- my arrival from '86 to '94? He</p> <p>25 was in the Stamford office in 1994 when I</p>	<p style="text-align: right;">Page 48</p> <p>(11:14:22-11:15:46)</p> <p>1 GREFIG</p> <p>2 A There were two people involved in</p> <p>3 different periods of time. When I first joined</p> <p>4 Mercer, New York and became involved with</p> <p>5 Woolworth, there was person named Phil Mauer,</p> <p>6 M-A-U-E-R, and he had had a long-standing</p> <p>7 relationship with the Woolworth account. He was</p> <p>8 an associate of Mercer, I guess was the title.</p> <p>9 Q So he assisted you?</p> <p>10 A Right.</p> <p>11 Q And there was someone else?</p> <p>12 A He retired in -- and moved to middle</p> <p>13 of New York. Cooperstown I think it was. I</p> <p>14 think he retired and he moved to Cooperstown.</p> <p>15 Q Are you talking about the second</p> <p>16 person or Phil?</p> <p>17 A Phil. Phil.</p> <p>18 Q We're done with Phil for the moment.</p> <p>19 There was a second person you had in mind.</p> <p>20 A Second person that became involved</p> <p>21 was a young English actuary. He went to -- he</p> <p>22 left and he went to Hewitt.</p> <p>23 Q Okay. There was Phil and the English</p> <p>24 guy?</p> <p>25 A Right.</p>

<p style="text-align: right;">Page 49</p> <p>(11:15:46-11:17:00)</p> <p>1 GREFIG</p> <p>2 Q Did they continue working on the</p> <p>3 account when you go to Stamford?</p> <p>4 A Well, Phil stopped work on the</p> <p>5 account because he retired and just went to</p> <p>6 Cooperstown, retired. So he had no further</p> <p>7 contact. David Baulter was the Englishman.</p> <p>8 Q So did David continue working after</p> <p>9 '94 --</p> <p>10 A I don't --</p> <p>11 Q -- on the account?</p> <p>12 A I don't remember, because David left</p> <p>13 Mercer and went to Hewitt, and I don't know the</p> <p>14 exact timing of his departure.</p> <p>15 Q Okay. But at some point Mr. Cassidy</p> <p>16 joins the team?</p> <p>17 A Joins the team. Right.</p> <p>18 Q Prior to that time, when Mr. Cassidy</p> <p>19 joined the team -- withdrawn.</p> <p>20 Why did you move to Stamford when you</p> <p>21 did?</p> <p>22 A The Stamford office functionally,</p> <p>23 personnel-wise was the remnants of the White</p> <p>24 Plains Hansen office, so I knew most of the</p> <p>25 people.</p>	<p style="text-align: right;">Page 51</p> <p>(11:18:12-11:19:42)</p> <p>1 GREFIG</p> <p>2 A Well, '94 -- '94, '95 time frame was</p> <p>3 when the cash balance conversion was underway?</p> <p>4 Q That's a question you're asking me?</p> <p>5 A I'm asking you.</p> <p>6 Q I'll represent to you that the</p> <p>7 conversion was underway planning-wise in 1995,</p> <p>8 and that it became effective January 1, '96.</p> <p>9 A Okay. So this was a special study</p> <p>10 undertaken in '95, but 1994, which was part of</p> <p>11 your question as well, we had two different</p> <p>12 environments then.</p> <p>13 '94 would have been valuation work,</p> <p>14 and I don't recall any special studies being</p> <p>15 undertaken in '94.</p> <p>16 I can't give you a -- I can't give</p> <p>17 you a reasonable -- a reasonable estimate of the</p> <p>18 timing, like ten percent or 20 percent.</p> <p>19 Q Okay. I have that rough -- very</p> <p>20 rough estimate. Is that fair?</p> <p>21 A Yeah. We'll use that as a reference</p> <p>22 point, but I'm not sure that that's even a right</p> <p>23 answer.</p> <p>24 Q We have a lot material to cover, so</p> <p>25 I'd like to try to just have an agreement with</p>
<p style="text-align: right;">Page 50</p> <p>(11:17:02-11:18:10)</p> <p>1 GREFIG</p> <p>2 Q So you thought it would be more</p> <p>3 enjoyable to work with people you knew?</p> <p>4 A During a course of a conversation</p> <p>5 that I had with the office manager in -- they</p> <p>6 had -- remember, I'm in New York now.</p> <p>7 They closed down -- after the</p> <p>8 acquisition -- they called it a merger, but</p> <p>9 after the acquisition they closed down the White</p> <p>10 Plains office, and everybody was relocated to</p> <p>11 Stamford, Connecticut.</p> <p>12 So the people who were in the</p> <p>13 Stamford office, including the office manager at</p> <p>14 that time, were former Hansen people.</p> <p>15 And during the course of conversation</p> <p>16 I had with the office manager, he said how would</p> <p>17 you like to come to Stamford. We've had some</p> <p>18 pressing needs.</p> <p>19 Q Okay. And were the needs any</p> <p>20 connection with Woolworth?</p> <p>21 A No. Oh, no, no, no, no.</p> <p>22 Q How much of the time that you</p> <p>23 spent -- would you say on average you spent</p> <p>24 working on Woolworth matters in the 1994, 1995</p> <p>25 time frame?</p>	<p style="text-align: right;">Page 52</p> <p>(11:19:46-11:20:52)</p> <p>1 GREFIG</p> <p>2 you that we don't -- I really do appreciate your</p> <p>3 thoughtfulness, but we have a lot of ground to</p> <p>4 cover.</p> <p>5 So the next question is, did you</p> <p>6 consider Woolworth at the time to be a major</p> <p>7 client of the firm?</p> <p>8 A Oh, yes.</p> <p>9 Q What did you know at that time as to</p> <p>10 how Woolworth became a client of Mercer?</p> <p>11 A Nothing.</p> <p>12 Q Was Woolworth, as far as you knew at</p> <p>13 the time, a very long-time client of Mercer?</p> <p>14 A I don't know for a fact that it was,</p> <p>15 but certainly had the sense that it was.</p> <p>16 Q Was there anybody at the time that</p> <p>17 you saw as being, in effect, the owner of that</p> <p>18 relationship?</p> <p>19 MR. RUMELD: I object to the</p> <p>20 form.</p> <p>21 THE WITNESS: I can answer?</p> <p>22 MS. WALWORTH: Yes, you can.</p> <p>23 A Owner of that relationship.</p> <p>24 Q You said that Brandes was the client</p> <p>25 manager; is that fair?</p>

<p style="text-align: right;">Page 53</p> <p>(11:20:52-11:22:04)</p> <p>1 GREFIG</p> <p>2 A Yes.</p> <p>3 Q Okay. So this question is slightly</p> <p>4 different, which is who -- who inside of Mercer</p> <p>5 was recognized and as far as you're aware</p> <p>6 compensated for retaining Woolworth as a major</p> <p>7 client of Mercer?</p> <p>8 A I don't know who that was, to be</p> <p>9 honest with you. I don't know who it was. When</p> <p>10 I -- when I came in, this individual Phil Mauer</p> <p>11 was -- was the guy that seemed to have the</p> <p>12 day-to-day contact with the client.</p> <p>13 Q He was an associate?</p> <p>14 A He was an associate of the firm, yes.</p> <p>15 Q And you were at that time?</p> <p>16 A Principal.</p> <p>17 Q So he was a subordinate to you?</p> <p>18 A Yes.</p> <p>19 Q And in the 1994 time frame --</p> <p>20 withdrawn.</p> <p>21 Who were the main points of contact</p> <p>22 at Woolworth that you interacted with directly?</p> <p>23 A Tom Kiley and Carol Kanowicz.</p> <p>24 Q Is that true from the period '87 to</p> <p>25 '98, or were you thinking of '94, '95?</p>	<p style="text-align: right;">Page 55</p> <p>(11:23:44-11:24:58)</p> <p>1 GREFIG</p> <p>2 valuation, we had some -- something abnormal</p> <p>3 that needed to be resolved, he was the go-to</p> <p>4 guy. That's about it.</p> <p>5 Q Anything else about what you knew</p> <p>6 that he did that caused you to think of him as</p> <p>7 the in-house administrator, other than what you</p> <p>8 mentioned so far?</p> <p>9 A Anything else that he did?</p> <p>10 Q Yes. You knew that he did, that</p> <p>11 caused -- causes you -- caused you to think of</p> <p>12 him as the in-house administrator for the plan.</p> <p>13 A No. He was the go-to guy on</p> <p>14 Woolworth retirement plan matters, as I think</p> <p>15 Carol Kanowicz was the go-to person on the</p> <p>16 health and welfare side, although Carol also has</p> <p>17 some history with -- with the Woolworth</p> <p>18 retirement plan.</p> <p>19 Q Well, if you could help me out on</p> <p>20 that score, the last comment you just made.</p> <p>21 The question that I asked that you</p> <p>22 gave the answer Kiley and Kanowicz to, you</p> <p>23 understood that to be not limited to the</p> <p>24 retirement plan?</p> <p>25 A Well, those were -- those were the</p>
<p style="text-align: right;">Page 54</p> <p>(11:22:08-11:23:42)</p> <p>1 GREFIG</p> <p>2 A No. That was true during my entire</p> <p>3 relationship with the client. Those were my --</p> <p>4 those were my primary contacts to -- in the</p> <p>5 sense that -- who did I have contact with most</p> <p>6 often? Tom Kiley and Carol Kanowicz.</p> <p>7 Q Throughout that approximate ten-year</p> <p>8 period?</p> <p>9 A Correct.</p> <p>10 Q And tell me, who is Tom Kiley?</p> <p>11 A Ignoring the meaningfulness of the</p> <p>12 title, okay, I'll put a title on him, but it may</p> <p>13 not be his official title.</p> <p>14 I saw him as the in-house</p> <p>15 administrator of the Woolworth retirement plan.</p> <p>16 I don't know whether he carried that title, but</p> <p>17 functionally that's the way I saw him.</p> <p>18 Q And what did that mean to you as</p> <p>19 in-house administrator?</p> <p>20 A Well, if there was -- or that the</p> <p>21 contact that I had with Woolworth was -- for the</p> <p>22 most part dealt with the funding valuation and</p> <p>23 the accounting valuations.</p> <p>24 So if we had a problem with the</p> <p>25 employee data that was submitted for the</p>	<p style="text-align: right;">Page 56</p> <p>(11:25:00-11:26:32)</p> <p>1 GREFIG</p> <p>2 people with whom I had most contact. And since</p> <p>3 my contact with Woolworth was with respect to</p> <p>4 the retirement plan, and I did have contact with</p> <p>5 Carol, somewhere along the line she had some</p> <p>6 involvement with it, but I saw Tom as the lead</p> <p>7 person on the -- on the retirement plan.</p> <p>8 Q And what function did she serve as</p> <p>9 far as you observed from your contact with her</p> <p>10 over the ten years?</p> <p>11 A I don't know. She was knowledgeable</p> <p>12 about the Woolworth retirement plan, okay, its</p> <p>13 history.</p> <p>14 She may have also had internal</p> <p>15 contacts that helped Tom resolve data issues,</p> <p>16 something like that, or she may have been</p> <p>17 someone that -- may have been someone that Tom</p> <p>18 turned to for help.</p> <p>19 Q And with respect to your involvement</p> <p>20 with Tom, you would be -- over the ten years you</p> <p>21 would be in contact with him on a regular basis,</p> <p>22 I assume?</p> <p>23 A Well, I have difficulty with the word</p> <p>24 regular, because that makes it sound like I</p> <p>25 talked to him weekly, but that's not the case.</p>

<p style="text-align: right;">Page 57</p> <p>(11:26:34-11:27:42)</p> <p>1 GREFIG</p> <p>2 I talked to him as was necessary to,</p> <p>3 you know, get -- get our work done, so we have</p> <p>4 an actuarial valuation. What do I need. I need</p> <p>5 to be pulling data. We got an issue with</p> <p>6 employee data. One of my people would go back</p> <p>7 to Tom.</p> <p>8 Q When you say one of your people, are</p> <p>9 you referring to --</p> <p>10 A Somebody on the staff who would</p> <p>11 handle data. I mean, there were going to be</p> <p>12 people that reported to Mauer for example, who</p> <p>13 would reconcile data and do those types of</p> <p>14 chores.</p> <p>15 Now, that individual finds problem</p> <p>16 with the data, that individual would go back</p> <p>17 probably to Kiley or bring it to Mauer, and</p> <p>18 Mauer would contact Kiley. And that -- that's</p> <p>19 the relationship. So I would have contact with</p> <p>20 Kiley probably less frequently than Mauer did.</p> <p>21 Q On an average basis?</p> <p>22 A On an average basis.</p> <p>23 Q So from -- let's take the period '94,</p> <p>24 remembering that the conversion was effective</p> <p>25 January 1, '96.</p>	<p style="text-align: right;">Page 59</p> <p>(11:28:34-11:29:32)</p> <p>1 GREFIG</p> <p>2 to remember, or you're not sure that's not the</p> <p>3 right way to say it?</p> <p>4 A I stumble over the word clerk,</p> <p>5 because we never used that word.</p> <p>6 Q Did you tell Steve Cohen that he was</p> <p>7 an actuarial clerk?</p> <p>8 A No. I probably told him he was a</p> <p>9 technician.</p> <p>10 Q And the difference is just clerk</p> <p>11 sounds pejorative?</p> <p>12 A We had mail clerks in the mail room,</p> <p>13 and people in actuarial teams were called</p> <p>14 technicians.</p> <p>15 Q And was there -- when did he become</p> <p>16 an actuarial technician working on the</p> <p>17 retirement plan, approximately?</p> <p>18 A I don't know. I'll be honest with</p> <p>19 you, I don't know. I recognize the name</p> <p>20 Michaels. I have no recollection of him working</p> <p>21 on the Woolworth retirement plan.</p> <p>22 Q Do you have any recollection of him</p> <p>23 at all?</p> <p>24 A Name-wise, yes.</p> <p>25 Q But no image comes to mind?</p>
<p style="text-align: right;">Page 58</p> <p>(11:27:42-11:28:32)</p> <p>1 GREFIG</p> <p>2 Let's take the period '94 forward,</p> <p>3 because that's also a nice divider, because</p> <p>4 that's when you moved to the Stamford office.</p> <p>5 Okay?</p> <p>6 A Uh-huh.</p> <p>7 Q So Mauer is out of the picture at</p> <p>8 that point, right?</p> <p>9 A Yes.</p> <p>10 Q Cassidy is in the picture?</p> <p>11 A Is brought into the picture, yes.</p> <p>12 Q And prior to that, you're not aware</p> <p>13 that he did anything for the Woolworth plan?</p> <p>14 A Cassidy?</p> <p>15 Q Right.</p> <p>16 A I'm not aware of him doing anything</p> <p>17 for the retirement. Prior to that time? No.</p> <p>18 Q And so moving forward from '94</p> <p>19 forward, there's Chris Michaels?</p> <p>20 A I recognize the name. Yes.</p> <p>21 Q An actuarial clerk?</p> <p>22 MR. RUMELD: I object to the</p> <p>23 form.</p> <p>24 A Yes.</p> <p>25 Q You hesitate, because you're trying</p>	<p style="text-align: right;">Page 60</p> <p>(11:29:36-11:30:40)</p> <p>1 GREFIG</p> <p>2 A No, no. And again, you know, nothing</p> <p>3 pops to mind about where he sat in the office</p> <p>4 relative to where I sat. So...</p> <p>5 Q Got it. Got it. So at the time</p> <p>6 Cassidy and you are both working on the</p> <p>7 Woolworth retirement plan say 1994, Cassidy is</p> <p>8 clearly your subordinate?</p> <p>9 A Yes.</p> <p>10 Q And he is -- at that time was he an</p> <p>11 enrolled actuary?</p> <p>12 A I don't know. I don't know what his</p> <p>13 credentials are.</p> <p>14 Q Or --</p> <p>15 A I don't remember what his credentials</p> <p>16 were at that time.</p> <p>17 Q It's okay if you don't. I just --</p> <p>18 what I'm saying is you do take a lot of time to</p> <p>19 answer questions, and it's fine.</p> <p>20 It's just -- you need to understand</p> <p>21 your -- your veracity is not being questioned as</p> <p>22 to these questions. Your -- just trying to find</p> <p>23 out what you know.</p> <p>24 A I understand that, but there are --</p> <p>25 it's been a long time.</p>

<p style="text-align: right;">Page 61</p> <p>(11:30:40-11:32:06)</p> <p>1 GREFIG</p> <p>2 Q I'm trying to refresh your</p> <p>3 recollection and keep moving.</p> <p>4 So with respect to this cash balance</p> <p>5 conversion, had you ever done a cash balance</p> <p>6 conversion prior to converting the Woolworth</p> <p>7 plan?</p> <p>8 A No.</p> <p>9 Q Had you ever worked on a plan that</p> <p>10 had been converted without your assistance to a</p> <p>11 cash balance format?</p> <p>12 A Not that I remember.</p> <p>13 Q How did it come about that Cassidy,</p> <p>14 your subordinate, was tasked with designing the</p> <p>15 cash balance conversion?</p> <p>16 A I don't think he designed the cash</p> <p>17 balance conversion. What he did was he</p> <p>18 developed a formula for future accruals under</p> <p>19 the plan that I reviewed for purposes of meeting</p> <p>20 the benefit accrual rules.</p> <p>21 I'm not sure I would take that</p> <p>22 activity that I do remember of him and expand it</p> <p>23 to the concept of having designed the</p> <p>24 conversion.</p> <p>25 There are other elements to it,</p>	<p style="text-align: right;">Page 63</p> <p>(11:33:34-11:34:18)</p> <p>1 GREFIG</p> <p>2 it satisfied the back-loading rules?</p> <p>3 A Right.</p> <p>4 MR. RUMELD: I object to the</p> <p>5 form.</p> <p>6 MS. WALWORTH: Could I ask you</p> <p>7 to wait until the question is</p> <p>8 finished so --</p> <p>9 MR. GOTTESDIENER: Carla, you</p> <p>10 did agree that you wouldn't be</p> <p>11 speaking. I can handle the witness</p> <p>12 and --</p> <p>13 MS. WALWORTH: I don't think I</p> <p>14 agreed I wouldn't be speaking, but I</p> <p>15 am going to ask him to let you finish</p> <p>16 a question.</p> <p>17 MR. GOTTESDIENER: I appreciate</p> <p>18 it, but I don't want you to do that.</p> <p>19 MS. WALWORTH: I'm going to go</p> <p>20 ahead, but please finish.</p> <p>21 Q So the design -- I'll take that back.</p> <p>22 Thanks.</p> <p>23 The design of the plan -- can you --</p> <p>24 you did meet for more than a couple of hours</p> <p>25 with lawyers, including lawyers for the</p>
<p style="text-align: right;">Page 62</p> <p>(11:32:08-11:33:32)</p> <p>1 GREFIG</p> <p>2 different versions, besides formula I would</p> <p>3 guess.</p> <p>4 Q Okay. Well, you know that the plan</p> <p>5 was converted and had what in your mind you</p> <p>6 would call a design.</p> <p>7 A Yes. Yes.</p> <p>8 Q What was that design?</p> <p>9 A I don't know. The old Woolworth</p> <p>10 retirement plan was a career average plan. The</p> <p>11 thing that's stuck in my mind relative to Jim</p> <p>12 Cassidy and his development of the future</p> <p>13 accruals was that he put together a schedule of</p> <p>14 future accruals, and to be honest with you I</p> <p>15 don't remember what we were accruing, but future</p> <p>16 accruals that had to satisfy the benefit accrual</p> <p>17 rules under ERISA.</p> <p>18 Q So is it fair to say that as your</p> <p>19 subordinate, you probably asked him to draw up a</p> <p>20 schedule of accruals, and then reviewed it to</p> <p>21 make sure that it wasn't --</p> <p>22 A Right. I either asked him or he</p> <p>23 volunteered to do it, but I was the one that did</p> <p>24 the peer review on the -- on the formula.</p> <p>25 Q Okay. And that was to make sure that</p>	<p style="text-align: right;">Page 64</p> <p>(11:34:20-11:36:02)</p> <p>1 GREFIG</p> <p>2 Defendants in this case.</p> <p>3 So I'm asking you to tell me, best as</p> <p>4 you can recall, sitting here now from whatever</p> <p>5 sources jog your memory, tell me, how did the</p> <p>6 conversion work? You mentioned a career average</p> <p>7 plan?</p> <p>8 A Right.</p> <p>9 Q How did it get converting to a cash</p> <p>10 balance plan? What were the actuarial</p> <p>11 mechanics?</p> <p>12 A I'll answer -- I'll obviously answer</p> <p>13 your question, but I need to refresh it, because</p> <p>14 I don't recall how cash balance plans work.</p> <p>15 I know we've got to take and convert</p> <p>16 the accrued benefit, but as I said before, when</p> <p>17 Jim Cassidy put together the accrual schedule, I</p> <p>18 don't know what it was that was being accrued.</p> <p>19 I don't recall the operation of the cash</p> <p>20 balance.</p> <p>21 Q Let me show you Exhibit 9. This is</p> <p>22 the 204(h) notice that went out to employees in</p> <p>23 November of 1995. Does that look familiar?</p> <p>24 A No. This document? No.</p> <p>25 Q Okay. You recall that a 204(h)</p>

<p style="text-align: right;">Page 65</p> <p>(11:36:06-11:37:16)</p> <p>1 GREFIG</p> <p>2 notice did go out to participants?</p> <p>3 A I know that a 204(h) notice was</p> <p>4 supposed to go out to participants, yes. I</p> <p>5 mean, that I remember. Whether it was sent I</p> <p>6 can't -- I can't attest to that.</p> <p>7 Q Okay. Why don't you just put it</p> <p>8 aside for a second.</p> <p>9 You said it was supposed to go out.</p> <p>10 Why did a 204(h) notice have to go out?</p> <p>11 A Because --</p> <p>12 MR. RUMELD: I object to the</p> <p>13 form.</p> <p>14 A -- there was a reduction in future</p> <p>15 benefit accruals.</p> <p>16 Q And how did that reduction come</p> <p>17 about?</p> <p>18 A The formula for future benefits</p> <p>19 accruals was less than the rate of accrual under</p> <p>20 the existing plan.</p> <p>21 Q And why don't you take a look again</p> <p>22 at Number 9, and directing your attention to the</p> <p>23 first page, where it discusses an initial</p> <p>24 account balance at the bottom of the page. You</p> <p>25 see that?</p>	<p style="text-align: right;">Page 67</p> <p>(11:38:08-11:39:00)</p> <p>1 GREFIG</p> <p>2 A Yes.</p> <p>3 Q Okay. You -- you're aware that -- if</p> <p>4 I could just take that back for a second.</p> <p>5 You're aware that a nine percent</p> <p>6 interest rate was used to convert the accrued</p> <p>7 benefit to an initial account balance?</p> <p>8 MR. RUMELD: I object to the</p> <p>9 form.</p> <p>10 A We'll use nine percent as the</p> <p>11 investment return assumption of the plan.</p> <p>12 Q And I represent to you that nine</p> <p>13 percent was also used to convert --</p> <p>14 A It was? Yes.</p> <p>15 Q Do you -- doesn't this jog your</p> <p>16 memory?</p> <p>17 A No.</p> <p>18 Q And here you're saying that you've</p> <p>19 not heard from any source since Steve Cohen</p> <p>20 contacted you that nine percent was used?</p> <p>21 MS. WALWORTH: Objection.</p> <p>22 Instruct you not to answer anything</p> <p>23 that was said to you by counsel.</p> <p>24 MR. GOTTESDIENER: I'm asking</p> <p>25 about jogging of his memory.</p>
<p style="text-align: right;">Page 66</p> <p>(11:37:16-11:38:04)</p> <p>1 GREFIG</p> <p>2 A Uh-huh.</p> <p>3 Q Do you see where it says initial</p> <p>4 account balance?</p> <p>5 A Uh-huh. Yes.</p> <p>6 Q It says, "Your accrued benefit as of</p> <p>7 December 31, 1995 is actuarially converted to an</p> <p>8 initial account balance"?</p> <p>9 A Okay.</p> <p>10 Q You see that?</p> <p>11 A Yes.</p> <p>12 Q And that refreshes your recollection</p> <p>13 as to how the career average formula as of</p> <p>14 12/31/95 was converted to?</p> <p>15 A Well, it refreshes me that the</p> <p>16 accrued benefit was converted to an account</p> <p>17 balance.</p> <p>18 And this -- that's about the only</p> <p>19 thing I remember from the functioning of the</p> <p>20 cash balance plan. Now how -- what was done in</p> <p>21 the future --</p> <p>22 Q That you would see on the next page?</p> <p>23 A Right.</p> <p>24 Q And you're looking on the next page</p> <p>25 at the pay credits scale?</p>	<p style="text-align: right;">Page 68</p> <p>(11:39:02-11:39:44)</p> <p>1 GREFIG</p> <p>2 Q I'm not asking what was said to you.</p> <p>3 Are you saying nothing comes to mind?</p> <p>4 A Nothing jogs my memory about the</p> <p>5 assumptions that were used at the time that this</p> <p>6 plan was converted, no.</p> <p>7 Q You've been -- just for the record,</p> <p>8 you've been reaching out to get back from me</p> <p>9 Exhibit 9, the 204(h) notice, for the last 20</p> <p>10 seconds, right?</p> <p>11 A Yes.</p> <p>12 Q The reason is, is because you'd like</p> <p>13 to see that nine percent assumption in the</p> <p>14 204(h) notice?</p> <p>15 MR. RUMELD: I object to the</p> <p>16 form.</p> <p>17 Q Is that why you -- he makes</p> <p>18 objections -- unless you're instructed not to</p> <p>19 answer, you just keep answering.</p> <p>20 You were reaching for it, and you're</p> <p>21 reaching for it even now, because you want to</p> <p>22 see nine percent?</p> <p>23 A No. I want to see --</p> <p>24 MR. RUMELD: I object to the</p> <p>25 form.</p>

<p style="text-align: right;">Page 69</p> <p>(11:39:44-11:40:46)</p> <p>1 GREFIG</p> <p>2 A I want to see how the future benefit</p> <p>3 accruals which I had mentioned before --</p> <p>4 Q Yes.</p> <p>5 A -- when I said I don't even know</p> <p>6 what's being accrued, I'm looking at that to get</p> <p>7 a better understanding of exactly how this cash</p> <p>8 balance plan operated prospectively after the</p> <p>9 accrued benefit was converted to a cash balance.</p> <p>10 Q That's a very understandable</p> <p>11 interest, but because I get to ask the</p> <p>12 questions, my focus is on the conversion moment,</p> <p>13 not on the future, okay? So could you focus on</p> <p>14 that?</p> <p>15 A Okay.</p> <p>16 Q Now, how -- an interest rate was used</p> <p>17 and it was nine percent; do you accept that?</p> <p>18 A If you say so, yes. Take that.</p> <p>19 Q Okay. How was the interest rate</p> <p>20 assumption used -- how was it -- withdrawn.</p> <p>21 Explain actuarially what that nine</p> <p>22 percent did to the accrued benefit to yield the</p> <p>23 initial account balance.</p> <p>24 A Converted the accrued benefit to a</p> <p>25 present value.</p>	<p style="text-align: right;">Page 71</p> <p>(11:41:48-11:42:36)</p> <p>1 GREFIG</p> <p>2 A Well, it's in the actuarial valuation</p> <p>3 report.</p> <p>4 Q That -- if I look in the actuarial</p> <p>5 valuation report, it will tell me that the</p> <p>6 interest rate used to create the opening balance</p> <p>7 was selected because it was the same interest</p> <p>8 rate as the plan's assumed rate of return of</p> <p>9 assets?</p> <p>10 A I don't know.</p> <p>11 Q That's what I'm getting to.</p> <p>12 A I don't know.</p> <p>13 Q You do agree they're totally</p> <p>14 different things, even if the number is</p> <p>15 identical?</p> <p>16 MR. RUMELD: I object to the</p> <p>17 form.</p> <p>18 A They're -- they're totally different</p> <p>19 things. The -- the investment return assumption</p> <p>20 that was used to convert the accrued benefit to</p> <p>21 a cash balance of nine percent is -- is</p> <p>22 different from the nine percent used for funding</p> <p>23 the plan?</p> <p>24 Q You're hesitating, because they're</p> <p>25 both -- they're both ways of --</p>
<p style="text-align: right;">Page 70</p> <p>(11:40:48-11:41:44)</p> <p>1 GREFIG</p> <p>2 Q Explain how that works.</p> <p>3 A Actuarial present value.</p> <p>4 Q Explain that.</p> <p>5 A Well, in performing -- in completing</p> <p>6 an actuarial valuation, you need a variety of</p> <p>7 assumptions.</p> <p>8 And the nine percent investment</p> <p>9 return assumption was derived from or would be</p> <p>10 derived, and I'm generalizing this, because I</p> <p>11 don't remember that Woolworth had what I'm about</p> <p>12 to reference, an investment policy statement.</p> <p>13 So the client -- the plan sponsor</p> <p>14 would develop an investment policy statement,</p> <p>15 directing the asset managers as to how to invest</p> <p>16 the assets, setting forth the amount of equities</p> <p>17 and fixed income and other types of investments</p> <p>18 would be permitted or desirable in a portfolio.</p> <p>19 Q Sir, I'm sorry. Your answer is</p> <p>20 interesting, but my question is about a benefit</p> <p>21 formula, not about --</p> <p>22 A Well, that's where the nine percent</p> <p>23 came from.</p> <p>24 Q But you know that for a fact, or</p> <p>25 you're just speculating?</p>	<p style="text-align: right;">Page 72</p> <p>(11:42:38-11:43:32)</p> <p>1 GREFIG</p> <p>2 A Well, I'm hesitating because I'm --</p> <p>3 I'm trying to understand what -- what your</p> <p>4 question really is. I mean, yes. They're the</p> <p>5 same number, but they have a common source.</p> <p>6 Q Well, again, when you --</p> <p>7 A Which is what I was saying. I</p> <p>8 mean --</p> <p>9 Q The same rate of return and --</p> <p>10 A Where the assumed rate of return came</p> <p>11 from, and my explanation may be long-winded, but</p> <p>12 that's where the nine percent came from.</p> <p>13 Q The nine percent used to convert</p> <p>14 accrued benefit? I thought you said you didn't</p> <p>15 remember.</p> <p>16 A I don't -- my memory -- when you</p> <p>17 asked me about what rate of return was used to</p> <p>18 make the conversion, nothing jogs my mind on the</p> <p>19 conversion. When we've identified the rate of</p> <p>20 return is nine --</p> <p>21 Q Interest rate. I didn't say rate of</p> <p>22 return.</p> <p>23 MR. RUMELD: I object to the</p> <p>24 form.</p> <p>25 A Well --</p>

<p style="text-align: right;">Page 73</p> <p>(11:43:32-11:44:32)</p> <p>1 GREFIG</p> <p>2 Q Do you recall that I asked you the</p> <p>3 interest rate?</p> <p>4 A Okay.</p> <p>5 Q Okay. Let's -- I think we're getting</p> <p>6 tangled in an area that -- I'd ask you if you'd</p> <p>7 agree to be summed up as follows.</p> <p>8 There's an interest rate that is used</p> <p>9 to take the accrued benefit and express it as an</p> <p>10 initial account balance, and that rate you</p> <p>11 accept was nine percent?</p> <p>12 A Yes.</p> <p>13 Q Okay. You're saying that nine</p> <p>14 percent also happened to be the plan's assumed</p> <p>15 rate of return on assets for funding purposes,</p> <p>16 correct?</p> <p>17 A Yes.</p> <p>18 Q And you would agree that they -- the</p> <p>19 nine percent rate in both -- in both questions</p> <p>20 is performing a present valuing function?</p> <p>21 A Yes.</p> <p>22 Q However, do you agree that the</p> <p>23 present valuing function for funding is a</p> <p>24 different present valuing function than for the</p> <p>25 benefit formula?</p>	<p style="text-align: right;">Page 75</p> <p>(11:45:44-11:46:52)</p> <p>1 GREFIG</p> <p>2 Q But if it turned out this -- well,</p> <p>3 you do agree that from the plan's perspective,</p> <p>4 nine percent is the rate of return on assets,</p> <p>5 but from the participant's perspective, if the</p> <p>6 participant were to be paid, the participant's</p> <p>7 perspective would be set by ERISA?</p> <p>8 MR. RUMELD: I object to the</p> <p>9 form.</p> <p>10 A Yes. Right.</p> <p>11 Q So if the GATT rate at the time of a</p> <p>12 conversion was six percent, that would be from</p> <p>13 the participant's perspective the right rate to</p> <p>14 use for present valuing purposes?</p> <p>15 A No.</p> <p>16 Q Why not?</p> <p>17 A What's the GATT rate anyway? That's</p> <p>18 a -- GATT to me is -- has to something to do</p> <p>19 with foreign countries, and I don't know --</p> <p>20 Q 30-year treasury bond?</p> <p>21 A Okay. Okay.</p> <p>22 Q When I -- you answered my question in</p> <p>23 the affirmative when I said from the</p> <p>24 participant's perspective what ERISA would</p> <p>25 require.</p>
<p style="text-align: right;">Page 74</p> <p>(11:44:34-11:45:42)</p> <p>1 GREFIG</p> <p>2 A In what way?</p> <p>3 Q One's for -- one's for investments</p> <p>4 and -- and assumed rate of return for funding,</p> <p>5 and one is for the participants' starting</p> <p>6 balance of a new benefit formula.</p> <p>7 A They're being used for different</p> <p>8 purposes.</p> <p>9 Q That's all I'm asking.</p> <p>10 A Okay.</p> <p>11 Q Now they're being used for different</p> <p>12 purposes --</p> <p>13 MR. RUMELD: I object to form.</p> <p>14 Q -- the number is the same, and you're</p> <p>15 saying you don't know how the nine percent rate</p> <p>16 was selected for use to convert the accrued</p> <p>17 benefit to create opening balances?</p> <p>18 A I don't remember how it was selected.</p> <p>19 Q Who selected it?</p> <p>20 A I don't know. But I would -- I</p> <p>21 would -- with a nine percent rate sitting out</p> <p>22 there for funding purposes, I would think that</p> <p>23 the -- the origin of the nine percent for</p> <p>24 present valuing the accrued benefit was somehow</p> <p>25 connected to the investment returns.</p>	<p style="text-align: right;">Page 76</p> <p>(11:46:54-11:47:58)</p> <p>1 GREFIG</p> <p>2 What did you have in mind when you</p> <p>3 answered in the affirmative?</p> <p>4 A Well, could you repeat -- you gave me</p> <p>5 a series of two questions there.</p> <p>6 Q I'll withdraw. Let me ask you this</p> <p>7 way.</p> <p>8 An interest rate is used to</p> <p>9 present-value a participant's accrued benefit in</p> <p>10 a defined benefit pension plan if the</p> <p>11 participant is to be paid a cash-out.</p> <p>12 A Okay. That's the distinction that</p> <p>13 was running through my mind. If you're going to</p> <p>14 pay a lump sum out of a plan, then you got</p> <p>15 certain requirements that have to be satisfied.</p> <p>16 Those requirements don't carry over</p> <p>17 to the present valuing of an accrued benefit for</p> <p>18 purposes of funding the plan.</p> <p>19 Q I agree. We're talking --</p> <p>20 A Right.</p> <p>21 Q So the plan funding is different than</p> <p>22 the -- well, there's three different functions.</p> <p>23 There's paying somebody. There's the</p> <p>24 plan's funding assumption, and then what I've</p> <p>25 been trying to get at, which is the creation of</p>

<p style="text-align: right;">Page 77</p> <p>(11:48:00-11:49:00)</p> <p>1 GREFIG</p> <p>2 an opening balance for a new benefit formula.</p> <p>3 A Okay.</p> <p>4 Q Do you see the distinction between</p> <p>5 the three?</p> <p>6 A Yes. I'm free to pick the two, and I</p> <p>7 don't have any freedom on the third, because the</p> <p>8 statute and regulations dictate what will be</p> <p>9 used for lump sum purposes.</p> <p>10 But within professional standards,</p> <p>11 I'm free to choose the other two rates</p> <p>12 independent of any regulations, because the</p> <p>13 regulations don't cut in on those issues.</p> <p>14 Q And what standards applied -- you</p> <p>15 said subject to standards you had the freedom to</p> <p>16 chose.</p> <p>17 What standards apply to the selection</p> <p>18 of the interest rate for creating the opening</p> <p>19 balance?</p> <p>20 A Oh. For creating opening -- what</p> <p>21 standards apply there? I don't think there are</p> <p>22 any standards that I'm aware of.</p> <p>23 My standards go back to the standards</p> <p>24 that are for funding standard account purposes</p> <p>25 and the reasonableness of actuarial assumptions.</p>	<p style="text-align: right;">Page 79</p> <p>(11:50:04-12:01:44)</p> <p>1 GREFIG</p> <p>2 incorrectly, that lump sums had to be determined</p> <p>3 using the PBGC rates, Pension Benefit Guarantee</p> <p>4 Corporation, PBGC rates.</p> <p>5 MR. GOTTESDIENER: We have to</p> <p>6 stop.</p> <p>7 MS. WALWORTH: I'd like to take</p> <p>8 a comfort break.</p> <p>9 THE VIDEOGRAPHER: This</p> <p>10 concludes Tape Number 1. The time is</p> <p>11 11:47 a.m. We're off the record.</p> <p>12 (Recess taken)</p> <p>13 THE VIDEOGRAPHER: This begins</p> <p>14 Tape Number 2. The time is</p> <p>15 11:58 a.m. We're back on the record.</p> <p>16 CONTINUED DIRECT EXAMINATION BY MR.</p> <p>17 GOTTESDIENER:</p> <p>18 Q I'm going to show you the 1996</p> <p>19 valuation. This is Exhibit 70.</p> <p>20 (Exhibit 70, 1996 valuation,</p> <p>21 was marked for identification, as of</p> <p>22 this date.)</p> <p>23 Q This was the first valuation after</p> <p>24 the plan amendment and reflects the fund</p> <p>25 valuation, doesn't it?</p>
<p style="text-align: right;">Page 78</p> <p>(11:49:02-11:50:00)</p> <p>1 GREFIG</p> <p>2 Q Right. So putting aside funding, you</p> <p>3 in your original answer said that it would be</p> <p>4 subject to standards, the free choice of the</p> <p>5 interest rate to create the opening balance, and</p> <p>6 now you're amending that answer to say you don't</p> <p>7 know that the standards apply to that.</p> <p>8 MR. RUMELD: I object to the</p> <p>9 form.</p> <p>10 A No. My reference to standard has to</p> <p>11 do with the funding. I don't think I ever</p> <p>12 ascribed standards to the conversion to the</p> <p>13 initial account balance.</p> <p>14 Q What --</p> <p>15 A So I'm not amending a statement. I</p> <p>16 don't think there were any standards that</p> <p>17 dictated what you did or didn't have to do.</p> <p>18 Q And the regulation that you reference</p> <p>19 or regulations, what did you call that in a</p> <p>20 shorthand way at the time?</p> <p>21 I threw out the word GATT, and that</p> <p>22 didn't resonate with you. Did you guys call</p> <p>23 that something in shorthand?</p> <p>24 A Not. I don't -- I don't remember --</p> <p>25 I don't remember GATT. I remember, perhaps</p>	<p style="text-align: right;">Page 80</p> <p>(12:01:48-12:03:20)</p> <p>1 GREFIG</p> <p>2 A Okay. Yeah. It's -- Page 3 says</p> <p>3 that it reflects -- Page 3. Statement says</p> <p>4 effective January '96 Woolworth retirement plan</p> <p>5 was amended to a cash balance format.</p> <p>6 Q And --</p> <p>7 A Kinney Shoe Corporation pension plan</p> <p>8 for manufacturing employees was merged. I don't</p> <p>9 remember that.</p> <p>10 Q Exhibit 71 is the prior year</p> <p>11 valuation.</p> <p>12 (Exhibit 71, 1995 valuation,</p> <p>13 was marked for identification, as of</p> <p>14 this date.)</p> <p>15 A May I make a comment?</p> <p>16 Q Can you answer the question?</p> <p>17 A What was the question?</p> <p>18 Q Is it the 1995 valuation?</p> <p>19 A Yes.</p> <p>20 Q Great. Comment's welcome.</p> <p>21 A The peer review process that I spoke</p> <p>22 about before, if you look at Page 4, both</p> <p>23 valuation reports that you handed me, the peer</p> <p>24 review process was done by two different people.</p> <p>25 Neither of them had a regular ongoing -- had no</p>

<p style="text-align: right;">Page 81</p> <p>(12:03:24-12:06:16)</p> <p>1 GREFIG</p> <p>2 relationship with.</p> <p>3 Q Understood, sir.</p> <p>4 A Their name is in there because of the</p> <p>5 peer review process. Okay. So this is...</p> <p>6 Q '95 and '96. Were there any funding</p> <p>7 assumptions that changed between the '95</p> <p>8 valuation and the 1996 valuation? And if so,</p> <p>9 could you indicate what those were?</p> <p>10 A Looking at Section 4.3 of the</p> <p>11 valuation reports, which is on Page 42 of the</p> <p>12 '95 report and Page 47 of the '96 report, the</p> <p>13 OBRA '87 current liability rate was changed from</p> <p>14 eight percent to 7.76.</p> <p>15 And other than knowing what OBRA</p> <p>16 means, I don't know what the '87 current</p> <p>17 liability is used for.</p> <p>18 The RPA '94 currently liability rate</p> <p>19 changed from 7.93 to 7.62, and the threshold</p> <p>20 current liability rate changed from 7.93 to</p> <p>21 7.62.</p> <p>22 Q Those aren't funding assumptions, are</p> <p>23 they?</p> <p>24 A I don't know. I mean, OBRA is the</p> <p>25 Omnibus Budget Reconciliation Act of 1987.</p>	<p style="text-align: right;">Page 83</p> <p>(12:07:44-12:10:52)</p> <p>1 GREFIG</p> <p>2 Q Okay. Would you accept my</p> <p>3 representation that these are -- what you read</p> <p>4 into the record were fund assumptions?</p> <p>5 A Well, no. I -- because I don't</p> <p>6 recall what the OBRA and RPA rates were used</p> <p>7 for. I recognize nine percent as a funding</p> <p>8 assumption.</p> <p>9 Q Can you tell me what the -- what was</p> <p>10 the cost effect of the amendment according to</p> <p>11 the valuation? If you look at Page 3?</p> <p>12 MS. WALWORTH: Which are the</p> <p>13 exhibits you would like him to look</p> <p>14 at?</p> <p>15 MR. GOTTESDIENER: '96 and '95.</p> <p>16 A So you want me to go to 1995?</p> <p>17 Q Yes. Both of those. What I'm trying</p> <p>18 to get at here is that there was no change in</p> <p>19 assumptions between the two years.</p> <p>20 MR. RUMELD: I object to the</p> <p>21 form.</p> <p>22 A What's the method change? Oh. Well,</p> <p>23 '95 valuation report states on Page 2 that</p> <p>24 "There were no changes in the actuarial</p> <p>25 assumptions or valuation procedures made since</p>
<p style="text-align: right;">Page 82</p> <p>(12:06:32-12:07:40)</p> <p>1 GREFIG</p> <p>2 Q What -- you -- you said there was</p> <p>3 different peer review people, but you were the</p> <p>4 only enrolled actuary who signed both of</p> <p>5 these --</p> <p>6 A And the Schedule B. Correct.</p> <p>7 Q Just to finish the question, you were</p> <p>8 the only enrolled actuary who signed these two</p> <p>9 valuations?</p> <p>10 A Oh. I'm sorry. No. Mark Hanrahan,</p> <p>11 who signed the '95, is designated as enrolled</p> <p>12 actuary. Page 4.</p> <p>13 Q '96?</p> <p>14 A '9 -- '95 one.</p> <p>15 Q Right. And '96?</p> <p>16 A And in '96 Doug Tinney was an</p> <p>17 enrolled actuary.</p> <p>18 Q Right. But both of those enrolled</p> <p>19 actuaries are only signing the peer review.</p> <p>20 A Correct.</p> <p>21 Q You're the only enrolled actuary</p> <p>22 signing?</p> <p>23 A Signing the -- signing the report,</p> <p>24 but based upon the signatures that are presented</p> <p>25 here, yeah. We could make that conclusion, yes.</p>	<p style="text-align: right;">Page 84</p> <p>(12:10:54-12:13:32)</p> <p>1 GREFIG</p> <p>2 the prior valuation. However, there had been</p> <p>3 changes to the asset valuation method and plan</p> <p>4 provisions."</p> <p>5 So when you used the term actuarial</p> <p>6 assumptions, do you include the asset valuation</p> <p>7 method in -- in your description?</p> <p>8 Q Well, first I'm talking about -- you</p> <p>9 were -- you're reading from '95 now.</p> <p>10 A Correct.</p> <p>11 Q I'm talking about '9 -- from '95 to</p> <p>12 '96.</p> <p>13 A Okay. The question was has there</p> <p>14 been a change as of '96, a change in the</p> <p>15 actuarial assumptions for funding purposes. Is</p> <p>16 that the question?</p> <p>17 Q Yes. From '95 to '96. You're on</p> <p>18 Section 4.3, right?</p> <p>19 A I'm on Section 4.3 in both valuation</p> <p>20 reports, yes.</p> <p>21 Q You see there's -- other than current</p> <p>22 liability interest rates you see there's no</p> <p>23 change?</p> <p>24 A As far as I've gotten. Right.</p> <p>25 That's interesting.</p>

<p style="text-align: right;">Page 85</p> <p>(12:13:42-12:15:08)</p> <p>1 GREFIG</p> <p>2 Q Are you able to answer the question</p> <p>3 as posed?</p> <p>4 A Were there changes in the '96</p> <p>5 valuation assumptions?</p> <p>6 Q Between '95 and '96, other than the</p> <p>7 current liability interest rate there's no</p> <p>8 change, right?</p> <p>9 A There doesn't appear to be any</p> <p>10 changes.</p> <p>11 Q So your assumption regarding what</p> <p>12 benefit form people would elect, that didn't</p> <p>13 change?</p> <p>14 A What page are we on?</p> <p>15 Q 4.3, or any other place you need to</p> <p>16 look at.</p> <p>17 A Okay. Your question is with respect</p> <p>18 to the form of benefit payment?</p> <p>19 Q That's right. Your assumption as to</p> <p>20 what form people would elect.</p> <p>21 A To -- do we even list that</p> <p>22 assumption? Is that assumption listed in the</p> <p>23 report?</p> <p>24 Q You do need to make that assumption.</p> <p>25 You agree, don't you? Look at Page 48. That</p>	<p style="text-align: right;">Page 87</p> <p>(12:16:30-12:18:04)</p> <p>1 GREFIG</p> <p>2 the document?</p> <p>3 A According to the document, yes.</p> <p>4 Q So you assume that people would</p> <p>5 continue to take the early retirement benefit in</p> <p>6 exactly the same pattern as prior to the</p> <p>7 amendment.</p> <p>8 A According to this document, yes.</p> <p>9 Q Go to Page 34 please.</p> <p>10 A Of...</p> <p>11 Q Of the '96 document. You see that</p> <p>12 over 7,000 people terminated?</p> <p>13 A Okay.</p> <p>14 Q And that's out of about 24,000?</p> <p>15 A Active members, yes.</p> <p>16 Q That's a large number?</p> <p>17 A Correct.</p> <p>18 Q Is that --</p> <p>19 A Although -- 15 percent of the work</p> <p>20 force is not -- as I recall not an unusual</p> <p>21 number.</p> <p>22 Q 15 percent termination is not an</p> <p>23 unusual --</p> <p>24 A No.</p> <p>25 Q It's not a -- well, you -- you don't</p>
<p style="text-align: right;">Page 86</p> <p>(12:15:20-12:16:24)</p> <p>1 GREFIG</p> <p>2 might help.</p> <p>3 A That's what I'm reading right now.</p> <p>4 Q Okay.</p> <p>5 A Yes. Okay. So Item Number 6 says</p> <p>6 that funding is based 70 percent of the members</p> <p>7 are married, female spouses four years younger,</p> <p>8 upon retirement payment is assumed to be in the</p> <p>9 form of 50 percent joint and survivor annuity.</p> <p>10 Q You're looking at the '96 document</p> <p>11 right now?</p> <p>12 A Yes.</p> <p>13 Q So from '95 to '96, that doesn't</p> <p>14 change.</p> <p>15 Your assumption regarding what</p> <p>16 benefit form people would take didn't change?</p> <p>17 A Correct.</p> <p>18 Q So after conversion to cash balance</p> <p>19 format, you made no assumption that people would</p> <p>20 take lump sums?</p> <p>21 MR. RUMELD: I object to the</p> <p>22 form.</p> <p>23 A That -- based upon this document,</p> <p>24 that appears that it may be the case.</p> <p>25 Q I mean, it is the case according to</p>	<p style="text-align: right;">Page 88</p> <p>(12:18:08-12:19:06)</p> <p>1 GREFIG</p> <p>2 agree that it's a large number?</p> <p>3 A Well, it's a large number.</p> <p>4 Q Relative to 24,000?</p> <p>5 A Yeah.</p> <p>6 Q You agree?</p> <p>7 A Yes. Yes.</p> <p>8 Q Well, go to -- it's almost a third.</p> <p>9 A Okay.</p> <p>10 Q You agree?</p> <p>11 A Just shy of a third, yes.</p> <p>12 Q Go to Page 47.</p> <p>13 A Of the same --</p> <p>14 Q Yes. Of the same document. And --</p> <p>15 A Okay.</p> <p>16 Q Can you tell me, what's the assumed</p> <p>17 turnover?</p> <p>18 A It's graded based upon age from --</p> <p>19 from 18 percent down to three percent.</p> <p>20 Q But on average you agree that's about</p> <p>21 ten percent on average?</p> <p>22 A Somewhere in that neighborhood. Now,</p> <p>23 that's just an average of the numbers in that</p> <p>24 column.</p> <p>25 That's not a population-weighted</p>

<p style="text-align: right;">Page 89</p> <p>(12:19:10-12:20:10)</p> <p>1 GREFIG</p> <p>2 average. You'll get a different result if you</p> <p>3 weight this by population.</p> <p>4 Q You agree that the -- the number of</p> <p>5 terminated is a large number.</p> <p>6 Is that something that would have</p> <p>7 come up in the peer review?</p> <p>8 A Might have, sure.</p> <p>9 Q Would that have impacted your</p> <p>10 turnover assumption?</p> <p>11 A No.</p> <p>12 Q Why not?</p> <p>13 A No, because we only had 14 people who</p> <p>14 took cash-outs here too. Because one year's</p> <p>15 experience is not sufficient to establish your</p> <p>16 actuarial assumptions.</p> <p>17 Q Well, would you have had a discussion</p> <p>18 with the sponsor as to whether this was going to</p> <p>19 continue?</p> <p>20 A Maybe yes, maybe no. I don't know.</p> <p>21 Q I'm not asking if you did, because</p> <p>22 you seem to be saying that you can't tell us</p> <p>23 from memory.</p> <p>24 I'm asking from your professional</p> <p>25 practice, and knowing your standards, would you</p>	<p style="text-align: right;">Page 91</p> <p>(12:21:48-12:23:42)</p> <p>1 GREFIG</p> <p>2 the valuation report someplace.</p> <p>3 You know, without having the</p> <p>4 opportunity to read through the document, I</p> <p>5 really can't offer much comment on terminations,</p> <p>6 because the -- the valuation report may make</p> <p>7 comment about the number of terminations.</p> <p>8 Q So the estimates -- the cost</p> <p>9 estimates used the same assumptions, but I want</p> <p>10 to concentrate on the -- when it was assumed the</p> <p>11 benefit would be paid and in what form.</p> <p>12 A Okay.</p> <p>13 Q All right? In the '95 valuation, if</p> <p>14 you turn to that, if the participant terminated</p> <p>15 at age 40, when would the participant be assumed</p> <p>16 to commence his or her benefit payments?</p> <p>17 And I don't know if this assists you,</p> <p>18 but in '94 benefits couldn't begin prior to age</p> <p>19 55.</p> <p>20 Does that ring a bell? Unless it was</p> <p>21 below the de minimis 3,500.</p> <p>22 A Those are two different numbers,</p> <p>23 aren't they?</p> <p>24 Q You mean 3,500 or 5,000?</p> <p>25 A 3,500 is a lump sum payment?</p>
<p style="text-align: right;">Page 90</p> <p>(12:20:14-12:21:42)</p> <p>1 GREFIG</p> <p>2 have not inquired as to whether that rate of</p> <p>3 termination would continue?</p> <p>4 A It depends on how much I knew about</p> <p>5 what may have been going on at the client. I</p> <p>6 mean, if -- if -- if we knew ahead of time that</p> <p>7 some unusual event occurred, you know, shut down</p> <p>8 a plant or something like that, we might have</p> <p>9 expected to see that, so we would only raise</p> <p>10 eyebrows with the client if we didn't see it.</p> <p>11 If on the other hand, if we had no</p> <p>12 knowledge whatsoever of what was going on at the</p> <p>13 client and the number popped up, that would have</p> <p>14 raised issues at the point at which the data was</p> <p>15 being reconciled from one year to the next, to</p> <p>16 confirm that these in fact were terminations,</p> <p>17 and that there isn't a mistake in the data.</p> <p>18 Q Well, you knew what was going on with</p> <p>19 Woolworth at the time of the plan conversion</p> <p>20 planning?</p> <p>21 A I suppose I knew what was going on,</p> <p>22 but I have no recollection of what was going on</p> <p>23 at the time of -- of the plan conversion.</p> <p>24 I mean, I -- that would have come out</p> <p>25 of conversations, or may have been documented in</p>	<p style="text-align: right;">Page 92</p> <p>(12:23:46-12:25:24)</p> <p>1 GREFIG</p> <p>2 Q Right. Sometimes --</p> <p>3 A As opposed to -- okay.</p> <p>4 Q Some years it was 5,000. Some years</p> <p>5 it was 3,500.</p> <p>6 A Okay. Because according to the</p> <p>7 assumption here, it says that vested employees</p> <p>8 may elect after age 55 to receive a reduced</p> <p>9 early retirement benefit.</p> <p>10 Q My question is a 40-year old</p> <p>11 terminated.</p> <p>12 A I don't see anything in the</p> <p>13 assumptions that -- that specifies what</p> <p>14 happens --</p> <p>15 Q If you go to 4.2.</p> <p>16 A Okay.</p> <p>17 Q You see the benefit's only available</p> <p>18 after age 55?</p> <p>19 A Under retirement dates, yes.</p> <p>20 Q Okay. So what is the -- what is the</p> <p>21 assumption as to when, say, a 40-year old would</p> <p>22 commence his or her benefits? Can't take it</p> <p>23 prior to 55.</p> <p>24 A You can't take annuity benefits prior</p> <p>25 to 55.</p>

<p style="text-align: right;">Page 93</p> <p>(12:25:26-12:26:58)</p> <p>1 GREFIG</p> <p>2 Q You can't take a lump sum, other than</p> <p>3 a cash-out for de minimis values, correct?</p> <p>4 A I'm -- it does not appear that an</p> <p>5 assumption has been made with respect to the</p> <p>6 40-year old that you mention.</p> <p>7 Q There is a retirement rate assumption</p> <p>8 in 4.3, isn't there?</p> <p>9 A Below 55?</p> <p>10 Q A general retirement rate assumption.</p> <p>11 Page 48.</p> <p>12 A Yes.</p> <p>13 Q Yes?</p> <p>14 A 42. That's termination.</p> <p>15 Retirement -- yeah. Retirement starts at age</p> <p>16 55.</p> <p>17 Q Right.</p> <p>18 A Okay.</p> <p>19 Q So under what you're looking at, what</p> <p>20 is the time that's assumed that that participant</p> <p>21 who terminates at age 40 will commence his or</p> <p>22 her benefit payments?</p> <p>23 A I don't know.</p> <p>24 MR. RUMELD: I object to the</p> <p>25 form.</p>	<p style="text-align: right;">Page 95</p> <p>(12:28:18-12:29:52)</p> <p>1 GREFIG</p> <p>2 relative to that specific situation does not</p> <p>3 appear to have changed in the following</p> <p>4 valuation report, based upon the summary of</p> <p>5 assumptions.</p> <p>6 Q So the same assumption was used?</p> <p>7 A Presumably.</p> <p>8 Q Well, it was, is my question. Can</p> <p>9 you confirm that it was?</p> <p>10 MR. RUMELD: I object to the</p> <p>11 form.</p> <p>12 Q And if it was a different assumption,</p> <p>13 could you show me where a different assumption</p> <p>14 is?</p> <p>15 A No. That's -- I can't find a</p> <p>16 different assumption. So I'm...</p> <p>17 Q You agree that it's the same</p> <p>18 assumption?</p> <p>19 A In the absence of an indication that</p> <p>20 it was changed, it probably was not changed.</p> <p>21 Q So let me show you the 1996 IRS Form</p> <p>22 5500, Exhibit 72.</p> <p>23 (Exhibit 72, 1996 IRS Form</p> <p>24 5500, was marked for identification,</p> <p>25 as of this date.)</p>
<p style="text-align: right;">Page 94</p> <p>(12:27:00-12:28:12)</p> <p>1 GREFIG</p> <p>2 A I don't know.</p> <p>3 Q Well --</p> <p>4 A It doesn't look like there's an</p> <p>5 assumption that has been set out for it. So the</p> <p>6 default -- and this is not a statement of fact,</p> <p>7 but default might be normal retirement age or</p> <p>8 early retirement age, but I don't see an</p> <p>9 assumption specifying how they're treated.</p> <p>10 Q Well, you're not assuming obviously</p> <p>11 that he's taking a lump sum, this 40-year old.</p> <p>12 A Again, based upon what's before me</p> <p>13 here in terms of actuarial assumptions, it</p> <p>14 doesn't appear that a provision has been made.</p> <p>15 Q Well, you're the actuary who signed</p> <p>16 the report.</p> <p>17 What assumption -- what do you think</p> <p>18 the assumption is?</p> <p>19 A Probably a default deferred to 65 or</p> <p>20 55.</p> <p>21 Q In the form of an annuity?</p> <p>22 A Yes.</p> <p>23 Q And did that change between 1995 and</p> <p>24 1996?</p> <p>25 A I -- whatever existed in 1995</p>	<p style="text-align: right;">Page 96</p> <p>(12:29:52-12:32:30)</p> <p>1 GREFIG</p> <p>2 Q If you look at the second page,</p> <p>3 doesn't it look like a large number of people</p> <p>4 terminated and were paid in 1996?</p> <p>5 A On Page 2?</p> <p>6 Q Yes.</p> <p>7 A I don't see a reconciliation of</p> <p>8 terminated participants. What it says -- this</p> <p>9 is a -- this is a status of participants, those</p> <p>10 who are active, those who are retired and</p> <p>11 receiving benefits, those entitled to -- who are</p> <p>12 terminated entitled to future benefits. So all</p> <p>13 this -- this is a cumulative history of the</p> <p>14 entire plan.</p> <p>15 Q You see how H, number participants</p> <p>16 that terminated employment during the plan year</p> <p>17 with accrued benefits that were less than a</p> <p>18 hundred percent vested?</p> <p>19 A Oh, yeah. 3,800.</p> <p>20 Q Okay. And then underneath I(2), the</p> <p>21 aggregate -- sorry. The number of separated</p> <p>22 participants required to be reported, 2,700?</p> <p>23 A Let me see. One -- was any</p> <p>24 participant separated from service. What's the</p> <p>25 SSA? Is that somebody who's terminated vested</p>

<p style="text-align: right;">Page 97</p> <p>(12:32:34-12:33:48)</p> <p>1 GREFIG</p> <p>2 has to be reported to --</p> <p>3 Q Social Security Administration?</p> <p>4 A Social Security Administration?</p> <p>5 Q You agree with that, right?</p> <p>6 A And they're saying -- the number they</p> <p>7 plugged in here was 2,728. Terminated with a</p> <p>8 vested benefit. Okay.</p> <p>9 Q So let's look at 1997 now. Just by</p> <p>10 the way, on '96, before we look at that, 72, you</p> <p>11 signed the Schedule B as the enrolled actuary</p> <p>12 for the plan, right?</p> <p>13 A Is the Schedule B in this package?</p> <p>14 Q Yes. It's on -- if you look in the</p> <p>15 right-hand corner there's what's called a Bates</p> <p>16 number. There's a stamp. It's on 767.</p> <p>17 A Okay. Yes.</p> <p>18 Q You signed as the enrolled actuary</p> <p>19 for the plan, right?</p> <p>20 A Yes.</p> <p>21 Q So let's look at the 1997 5500, which</p> <p>22 is Exhibit 73, which I just handed you.</p> <p>23 (Exhibit 73, 1997 IRS Form</p> <p>24 5500, was marked for identification,</p> <p>25 as of this date.)</p>	<p style="text-align: right;">Page 99</p> <p>(12:36:22-12:38:18)</p> <p>1 GREFIG</p> <p>2 looking at?</p> <p>3 Q Page 34. The number of actives is</p> <p>4 24,780, is it not?</p> <p>5 A On Page 34?</p> <p>6 Q Yes.</p> <p>7 A Active participants.</p> <p>8 Q '96 valuation, Exhibit 70.</p> <p>9 A '96. Okay. '96 shows active</p> <p>10 participants, January 1, 1995, 24,780, and as of</p> <p>11 January 1, 1996, 21,461.</p> <p>12 Q Yes. And if you look at --</p> <p>13 A We agree with those numbers? Are we</p> <p>14 looking at the same numbers?</p> <p>15 Q Yes.</p> <p>16 A Okay.</p> <p>17 Q So go back to the '97 5500, the</p> <p>18 second page.</p> <p>19 A '97. Okay.</p> <p>20 Q If you compare that -- look at the</p> <p>21 number of actives.</p> <p>22 A Okay.</p> <p>23 Q Number of actives left, what's that</p> <p>24 number?</p> <p>25 A There is an entry of 12,000 going on</p>
<p style="text-align: right;">Page 98</p> <p>(12:33:48-12:36:18)</p> <p>1 GREFIG</p> <p>2 Q If you look at the second page and</p> <p>3 look at the number of actives and compare to the</p> <p>4 prior year, you can see that the number dropped</p> <p>5 from 24,000 to 4,000.</p> <p>6 A 24,000? Which -- where are we?</p> <p>7 Q Second page.</p> <p>8 A Yes. Page 2 of the 5500 for 1996.</p> <p>9 Q Is the number of -- 24,000 is the</p> <p>10 number of people reported at the beginning, the</p> <p>11 number of people at the beginning of 1995.</p> <p>12 A Are you looking on the 5500?</p> <p>13 Q Yes, sir.</p> <p>14 A But there's no --</p> <p>15 Q I'm sorry. Valuation. That's on the</p> <p>16 valuation.</p> <p>17 A 1995 valuation. There's no</p> <p>18 reconciliation of head count in the 5500.</p> <p>19 Q Yes. In the '95 valuation.</p> <p>20 A January 1, 1995, we had -- are you</p> <p>21 adding Kinney and Woolworth together to come up</p> <p>22 with your --</p> <p>23 Q Yes.</p> <p>24 A So it's 13,562 for Woolworth and</p> <p>25 10,362 for Kinney. Those are the numbers we're</p>	<p style="text-align: right;">Page 100</p> <p>(12:38:30-12:40:04)</p> <p>1 GREFIG</p> <p>2 here.</p> <p>3 Q So now it's down by half?</p> <p>4 A Well, it also conflicts with the</p> <p>5 other information we just looked at.</p> <p>6 Q Just answer the question. Is it now</p> <p>7 down by half, according to what we looked at?</p> <p>8 A I can't answer that question.</p> <p>9 Q You can't answer 24,000 take away</p> <p>10 12,000?</p> <p>11 A I can tell you -- I can tell you that</p> <p>12 12,000 is half of 24. That I can say. I don't</p> <p>13 know that we're looking at the same set of</p> <p>14 numbers.</p> <p>15 Let me -- let me just look at the</p> <p>16 documents that I have in front of me, make sure</p> <p>17 that we're looking at the same plan, because</p> <p>18 there were two other plans floating around at</p> <p>19 one time, right?</p> <p>20 So this is at the end of the plan</p> <p>21 year. This is at the end of the 1997 plan year.</p> <p>22 So that would be 1/1/98. I don't think we're</p> <p>23 looking at the same set of documents -- same set</p> <p>24 of numbers.</p> <p>25 (Exhibit 74, valuation, was</p>

<p style="text-align: right;">Page 101</p> <p>(12:40:06-12:41:12)</p> <p>1 GREFIG</p> <p>2 marked for identification, as of this</p> <p>3 date.)</p> <p>4 Q Let me show you Exhibit 74, sir. I</p> <p>5 have your answer to the last question.</p> <p>6 If you would please look at Number</p> <p>7 74. 74 --</p> <p>8 A What is the plan here on this thing?</p> <p>9 This one says January 31, '98. All of these</p> <p>10 other documents are referencing a December 31st</p> <p>11 plan year end. What is this?</p> <p>12 MS. WALWORTH: What document is</p> <p>13 in front of you? What are you</p> <p>14 looking -- what are you reading from?</p> <p>15 Exhibit 73.</p> <p>16 THE WITNESS: Exhibit 73. It's</p> <p>17 Form 5500, purportedly for the</p> <p>18 Woolworth -- it doesn't say. Has a</p> <p>19 plan sponsor's name. It doesn't</p> <p>20 have --</p> <p>21 MS. WALWORTH: Do you want him</p> <p>22 to look at a different document?</p> <p>23 MR. GOTTESDIENER: I'd like you</p> <p>24 to just not interrupt us.</p> <p>25 A I'll put that aside.</p>	<p style="text-align: right;">Page 103</p> <p>(12:43:40-12:45:10)</p> <p>1 GREFIG</p> <p>2 A Of that same report?</p> <p>3 Q Yes, sir.</p> <p>4 A Okay.</p> <p>5 Q You see how it has actives 5,000, and</p> <p>6 then non-vested benefits 6,000? Approximately</p> <p>7 11,000, 12,000?</p> <p>8 A There -- we've got active</p> <p>9 participants of 5,432?</p> <p>10 Q Yes.</p> <p>11 A We're looking at 11,468 deferred</p> <p>12 participants.</p> <p>13 Q No. The 6,000 number, the non-vested</p> <p>14 benefit.</p> <p>15 A Non-vested. Okay.</p> <p>16 Q So you put those together and you get</p> <p>17 roughly 12,000?</p> <p>18 A Right. A -- right.</p> <p>19 Q So 12,000 as of January 1, '98 would</p> <p>20 be consistent with 11,000 as of 1/1/99?</p> <p>21 MR. RUMELD: I object to the</p> <p>22 form.</p> <p>23 A Yeah, but there's a major discrepancy</p> <p>24 between the 5500 and the Schedule B that's</p> <p>25 attached.</p>
<p style="text-align: right;">Page 102</p> <p>(12:41:12-12:43:36)</p> <p>1 GREFIG</p> <p>2 Q How about look at the Schedule B?</p> <p>3 Maybe that -- that you signed.</p> <p>4 MR. RUMELD: Schedule B of</p> <p>5 which exhibit, please?</p> <p>6 MR. GOTTESDIENER: 73.</p> <p>7 A I didn't sign the '97 Schedule B.</p> <p>8 Q Okay. But look at -- it may help.</p> <p>9 The exhibit that I showed you, the valuation</p> <p>10 that's right under the exhibit you're looking</p> <p>11 at?</p> <p>12 A Yes.</p> <p>13 Q If you turn to Page 51?</p> <p>14 A 51?</p> <p>15 Q Yes.</p> <p>16 MS. WALWORTH: Is that exhibit</p> <p>17 Exhibit 74?</p> <p>18 MR. GOTTESDIENER: It is.</p> <p>19 A January 1, 1999. Okay.</p> <p>20 Q Does it help to see that the</p> <p>21 participant count totaling 11,000? So 12,000 --</p> <p>22 A Those are participant counts with</p> <p>23 deferred vested benefits. Those aren't active</p> <p>24 employees.</p> <p>25 Q All right. Look -- look at Page 11.</p>	<p style="text-align: right;">Page 104</p> <p>(12:45:12-12:46:40)</p> <p>1 GREFIG</p> <p>2 Q You do agree that there's -- in what</p> <p>3 you've seen, even if you think this is not</p> <p>4 reconcilable fully, that there's a significant</p> <p>5 decline in the number of participants?</p> <p>6 A I mean, the Schedule B is the</p> <p>7 beginning of the year, and 5500 is the end of</p> <p>8 the year, so there's going to be a discrepancy.</p> <p>9 Right.</p> <p>10 MR. RUMELD: I object to form.</p> <p>11 A Is that right? Okay. Number of</p> <p>12 participants at the end of plan year. Okay.</p> <p>13 Q Did you --</p> <p>14 A At the end of the '97 plan year there</p> <p>15 were about 12,000 active participants. Okay.</p> <p>16 Q And we've been looking at</p> <p>17 significantly higher numbers not that long</p> <p>18 before, you agree?</p> <p>19 A There are higher numbers before, but</p> <p>20 what I'm unable to track through my mind right</p> <p>21 now is are we looking at pre-Kinney Shoe merger</p> <p>22 into the plan and post-Kinney Shoe merger into</p> <p>23 the plan. We've got all these various results</p> <p>24 going on.</p> <p>25 But based upon the numbers that</p>

<p style="text-align: right;">Page 105</p> <p>(12:46:42-12:47:44)</p> <p>1 GREFIG</p> <p>2 you're referencing, it appears that it was a</p> <p>3 decline in the population.</p> <p>4 Q A very significant decline. Kinney</p> <p>5 is about 600 people.</p> <p>6 A 600? Okay.</p> <p>7 Q You would agree, very significant</p> <p>8 decline?</p> <p>9 A It appears to be. Yes, it does.</p> <p>10 Q And you would agree that a very large</p> <p>11 number of these people are taking lump sums?</p> <p>12 MR. RUMELD: I object to form.</p> <p>13 A I don't know. The last lump sum --</p> <p>14 last lump sum count that I saw was 14.</p> <p>15 Q How about looking at the 1998</p> <p>16 valuation?</p> <p>17 A 1998. You gave me the '99. Did you</p> <p>18 give me '98? I don't think I have '98. '96.</p> <p>19 MR. GOTTESDIENER: Your counsel</p> <p>20 suggested we take at break at 12:45</p> <p>21 for lunch. So why don't we take a</p> <p>22 break at this point.</p> <p>23 MS. WALWORTH: Thank you.</p> <p>24 A I don't think I have that valuation</p> <p>25 report that you just referenced.</p>	<p style="text-align: right;">Page 107</p> <p>(13:40:02-13:41:10)</p> <p>1 GREFIG</p> <p>2 with lawyers, spent hours talking about all</p> <p>3 this.</p> <p>4 There's something in your mind's eye</p> <p>5 about how you first learned about cash balance</p> <p>6 plans for example, how -- what do you recall</p> <p>7 about your first experience with cash balance</p> <p>8 plans?</p> <p>9 A Well, cash balance plans were</p> <p>10 supposedly all of the rage in -- in the early</p> <p>11 '90s, much like 401(k) plans all of a sudden</p> <p>12 became a rage when they were discovered in the</p> <p>13 internal revenue code.</p> <p>14 So, you know, the actuarial firms</p> <p>15 probably were sending out brochures and it was</p> <p>16 discussion in perhaps the actuarial literature</p> <p>17 or the New York Actuaries -- this is all</p> <p>18 assumptions on my behalf.</p> <p>19 This is where you would have</p> <p>20 encountered conversations about cash balance</p> <p>21 plans, or EA meetings in Washington.</p> <p>22 Q And you would go to those EA</p> <p>23 meetings?</p> <p>24 A Uh-huh.</p> <p>25 Q And so there came a time that you</p>
<p style="text-align: right;">Page 106</p> <p>(12:47:48-13:40:00)</p> <p>1 GREFIG</p> <p>2 THE VIDEOGRAPHER: This</p> <p>3 concludes Tape Number 2. The time is</p> <p>4 12:45 p.m. We're off the record.</p> <p>5 (Recess taken)</p> <p>6 THE VIDEOGRAPHER: This begins</p> <p>7 Tape Number 3. The time is 1:36 p.m.</p> <p>8 We're back on the record.</p> <p>9 CONTINUED DIRECT EXAMINATION BY MR.</p> <p>10 GOTTESDIENER:</p> <p>11 Q Good afternoon.</p> <p>12 A Good afternoon.</p> <p>13 Q Tell me what's your earliest</p> <p>14 recollection of Woolworth's plan to convert the</p> <p>15 plan to a cash balance plan.</p> <p>16 A I -- I personally don't have a</p> <p>17 recollection, but conversion came around in '95.</p> <p>18 You know, would have been within months of that.</p> <p>19 I don't -- I have no recollection of</p> <p>20 the -- of communications or anything else like</p> <p>21 that, but it doesn't seem to be something that</p> <p>22 would drag on forever.</p> <p>23 Q What I'm asking, in your mind's eye,</p> <p>24 you've now been subjected to all this stuff with</p> <p>25 a subpoena and phone calls and then meetings</p>	<p style="text-align: right;">Page 108</p> <p>(13:41:12-13:42:08)</p> <p>1 GREFIG</p> <p>2 became familiar with cash balance plans in</p> <p>3 general?</p> <p>4 A Yes. Conceptually, yes.</p> <p>5 Q Conceptually?</p> <p>6 A Yes.</p> <p>7 Q And then there came a time where you</p> <p>8 understood that Foot Locker was thinking about</p> <p>9 making change to the existing retirement plan</p> <p>10 and maybe it be a cash balance change?</p> <p>11 A Right. I had to become aware of it</p> <p>12 because I became involved in the project to do</p> <p>13 so, yes.</p> <p>14 Q So I'm asking you just to give us --</p> <p>15 what are your recollections of the start of</p> <p>16 that? Phone calls? Meetings?</p> <p>17 A Well, you know, I don't -- I don't</p> <p>18 have any recollection. And this is not just</p> <p>19 Foot Locker or Woolworth.</p> <p>20 I look back -- thought back about</p> <p>21 some of the headline events that I've been</p> <p>22 involved in in my life, and I don't remember</p> <p>23 phone calls. I don't remember meetings.</p> <p>24 Q How about then step back one level</p> <p>25 and -- what -- how do you remember the -- the</p>

<p style="text-align: right;">Page 109</p> <p>(13:42:14-13:43:14)</p> <p>1 GREFIG</p> <p>2 design being handled?</p> <p>3 Was that something that your shop was</p> <p>4 principally responsible for or Foot Locker was</p> <p>5 driving that process? What's your sense?</p> <p>6 A My -- my sense, and it's only a sense</p> <p>7 -it's not my recollection- is that it was a</p> <p>8 project that was a communal event.</p> <p>9 Q A communal including --</p> <p>10 A Woolworth.</p> <p>11 Q Who at Woolworth?</p> <p>12 A What?</p> <p>13 Q Who at Woolworth?</p> <p>14 A Would have been -- probably fallen to</p> <p>15 Tom Kiley, since he was, as I said before,</p> <p>16 conceptually the co-administrator or</p> <p>17 administrator of the plan.</p> <p>18 Q You just said co-administrator. Who</p> <p>19 were you thinking as the other?</p> <p>20 A That was a misstatement. The other</p> <p>21 one -- there were two people down there that I</p> <p>22 constantly had contact with for one reason or</p> <p>23 another, but to include Carol as a</p> <p>24 co-administrator is inappropriate. That's a</p> <p>25 slip of the tongue.</p>	<p style="text-align: right;">Page 111</p> <p>(13:44:24-13:45:20)</p> <p>1 GREFIG</p> <p>2 comments that may have been made by Phil Mauer.</p> <p>3 Q Based on -- as you understood it --</p> <p>4 A That we discussed before.</p> <p>5 Q Mr. Mauer's years of experience</p> <p>6 working with Mr. Kiley?</p> <p>7 A Uh-huh.</p> <p>8 Q So -- and how about Ms. Kanowicz?</p> <p>9 How was her facility with numbers and</p> <p>10 understanding of the pension process?</p> <p>11 MR. RUMELD: I object to the</p> <p>12 form.</p> <p>13 Q How was her facility with numbers?</p> <p>14 A I think -- I think it was fine. I</p> <p>15 mean...</p> <p>16 Q Not as strong as Mr. Kiley's?</p> <p>17 MR. RUMELD: I object to the</p> <p>18 form.</p> <p>19 A I can't make a contrast there. Okay?</p> <p>20 Q Well, at some point you had to have</p> <p>21 meetings with them and discuss the conversion</p> <p>22 possibilities, right?</p> <p>23 A Right. But, I mean, in my -- in my</p> <p>24 mind I have no recollection of ever having drawn</p> <p>25 a distinction between the two of them in terms</p>
<p style="text-align: right;">Page 110</p> <p>(13:43:14-13:44:20)</p> <p>1 GREFIG</p> <p>2 Q Okay. So tell -- tell us -- paint us</p> <p>3 a picture of who Tom Kiley was around the time</p> <p>4 of the conversion, in the sense of what was his</p> <p>5 level of expertise as far as you gathered in</p> <p>6 your interactions with him?</p> <p>7 A The people --</p> <p>8 Q Mr. Kiley in particular. Let's focus</p> <p>9 on him.</p> <p>10 A Struck me as self-sufficient people.</p> <p>11 Q As a self sufficient person?</p> <p>12 A Yes.</p> <p>13 Q And he was good with numbers?</p> <p>14 A Yes.</p> <p>15 Q And he was someone who you knew</p> <p>16 had -- he had a math background and had some</p> <p>17 actuarial training?</p> <p>18 A Well, I didn't know that he had a</p> <p>19 math background. I thought at one time that he</p> <p>20 might have worked for Mercer before he went to</p> <p>21 Woolworth, but I don't -- that is not a</p> <p>22 statement of fact.</p> <p>23 Q But that's -- you thought that based</p> <p>24 on his facility with these concepts and numbers?</p> <p>25 A Yes. Right. And constant -- and</p>	<p style="text-align: right;">Page 112</p> <p>(13:45:22-13:46:26)</p> <p>1 GREFIG</p> <p>2 of ability. Let's put it that way.</p> <p>3 Q Other people involved in this</p> <p>4 communal process at Mercer, if I'm</p> <p>5 understanding, Cassidy's involvement was</p> <p>6 principally to come up with a pay credit and an</p> <p>7 interest credit scale?</p> <p>8 A A pay -- pay credit scale, yes.</p> <p>9 Based on the information that I looked at that</p> <p>10 you gave me before.</p> <p>11 Q In the 204(h) notice?</p> <p>12 A Yes.</p> <p>13 Q And do you know how he went about</p> <p>14 doing that?</p> <p>15 A No.</p> <p>16 Q Did you give him any guidance such --</p> <p>17 A I don't -- I don't remember, you</p> <p>18 know.</p> <p>19 Q But he was your subordinate?</p> <p>20 A Yes.</p> <p>21 Q So -- and any -- so -- but from</p> <p>22 Mercer's point of view -- withdrawn.</p> <p>23 From Mercer, other than Cassidy's</p> <p>24 involvement, as you described the principal</p> <p>25 spokesperson for Mercer, acting on behalf of</p>

<p style="text-align: right;">Page 113</p> <p>(13:46:30-13:47:22)</p> <p>1 GREFIG</p> <p>2 Mercer, was yourself?</p> <p>3 A Yes.</p> <p>4 Q And on the Foot Locker end, the</p> <p>5 conversion consideration process involved Kiley,</p> <p>6 Kanowicz, and anyone else from Foot Locker</p> <p>7 involved?</p> <p>8 MR. RUMELD: I object to the</p> <p>9 form.</p> <p>10 A I don't think so. I don't remember</p> <p>11 anybody else. I don't specifically.</p> <p>12 Q I'll put some names in front of you</p> <p>13 and we'll see how your recollection goes.</p> <p>14 A I don't specifically remember Kiley,</p> <p>15 and I don't remember Kanowicz, but I do know</p> <p>16 they were my primary contacts at -- at</p> <p>17 Woolworth. So...</p> <p>18 Q How about Pat Peck?</p> <p>19 A I know Pat Peck. Had occasional</p> <p>20 contact with her.</p> <p>21 Q And contact you mean you spoke with</p> <p>22 her.</p> <p>23 A Spoke with her. Right.</p> <p>24 Q And --</p> <p>25 A Would have spoke with her -- spoken</p>	<p style="text-align: right;">Page 115</p> <p>(13:48:40-13:49:50)</p> <p>1 GREFIG</p> <p>2 review of the Society of Actuaries outline on</p> <p>3 the session on cash balance plans.</p> <p>4 "Please let me know if there are</p> <p>5 specific issues you would like me to address in</p> <p>6 the commentary."</p> <p>7 Is that correct? I've accurately</p> <p>8 described this, that this is something you sent</p> <p>9 to Mr. Kiley?</p> <p>10 A Based on the cover letter, yes.</p> <p>11 Q And what is attached is, we were not</p> <p>12 provided with the Society of Actuaries outline,</p> <p>13 but we did get this draft commentary.</p> <p>14 And you see that starting on the</p> <p>15 inner page you're looking at, 10610? That's</p> <p>16 what page you're on now?</p> <p>17 A 611.</p> <p>18 Q Okay. You see this introduction to</p> <p>19 cash balance plan. This is your draft</p> <p>20 commentary?</p> <p>21 A Uh-huh.</p> <p>22 Q You have to say yes or no for the</p> <p>23 court reporter.</p> <p>24 A I'm sorry. Yes.</p> <p>25 Q So you created this commentary based</p>
<p style="text-align: right;">Page 114</p> <p>(13:47:24-13:48:38)</p> <p>1 GREFIG</p> <p>2 with her.</p> <p>3 Q And attended meetings that she was</p> <p>4 present in?</p> <p>5 A No. I don't remember that. I don't</p> <p>6 remembering meeting. Again, I don't remember</p> <p>7 meetings or conversations. Didn't mean didn't</p> <p>8 happen, but I don't have a recollection of it.</p> <p>9 Q Okay. You remember that Kiley was</p> <p>10 the point person who was handling Foot Locker's</p> <p>11 consideration of various design alternatives for</p> <p>12 a converted plan?</p> <p>13 A I guess so, yes.</p> <p>14 (Exhibit 75, communication</p> <p>15 dated 2/6/95, was marked for</p> <p>16 identification, as of this date.)</p> <p>17 Q Look at 75, and tell me if this is</p> <p>18 not a communication from you to Mr. Kiley, dated</p> <p>19 February 6, 1995, in which you write, "Dear Tom,</p> <p>20 enclosed are one dozen copies of a draft</p> <p>21 commentary on cash balance plans.</p> <p>22 "There are no numerical examples, but</p> <p>23 the more important concepts and issues are</p> <p>24 presented.</p> <p>25 "I've also enclosed a copy for your</p>	<p style="text-align: right;">Page 116</p> <p>(13:49:52-13:50:46)</p> <p>1 GREFIG</p> <p>2 on materials that you had gathered while you</p> <p>3 were getting up to speed on the latest in cash</p> <p>4 balance plan design?</p> <p>5 A It appears to be the case, yes.</p> <p>6 Q And you're noting there no numerical</p> <p>7 examples, but that the important concepts -- the</p> <p>8 more important concepts and issues are</p> <p>9 presented.</p> <p>10 MR. RUMELD: I object to the</p> <p>11 form.</p> <p>12 Q You say that to Mr. Kiley, right?</p> <p>13 A Yes. In the cover letter, yes.</p> <p>14 Q And that's true. You would agree</p> <p>15 that that's an accurate -- you're accurately</p> <p>16 describing your draft commentary that you're</p> <p>17 sending to him?</p> <p>18 MR. RUMELD: I object to the</p> <p>19 form.</p> <p>20 A I'm accurately describing what's</p> <p>21 attached to the letter, right.</p> <p>22 Q Which is your draft commentary?</p> <p>23 A Yes.</p> <p>24 Q And you're providing him with one</p> <p>25 dozen examples -- one dozen copies so he could</p>

<p style="text-align: right;">Page 117</p> <p>(13:50:50-13:52:26)</p> <p>1 GREFIG</p> <p>2 share that with colleagues at Foot Locker?</p> <p>3 A Yes. I stumble occasionally, because</p> <p>4 I've always known them as Woolworth, and at that</p> <p>5 time I think they still were Woolworth.</p> <p>6 Q Okay.</p> <p>7 A Right.</p> <p>8 Q And you'll notice that -- if you go</p> <p>9 to Page 7, under transitional considerations,</p> <p>10 you'll see that it says -- the third bullet</p> <p>11 point, "Traditional grandfathered benefit</p> <p>12 provisions will be needed to protect older,</p> <p>13 long-service employees nearing retirement.</p> <p>14 "Alternatives include using lower</p> <p>15 interest rates in the conversion calculation to</p> <p>16 create larger initial account balances,</p> <p>17 employing a dynamic grandfather for older</p> <p>18 employees, so that the account retirement is the</p> <p>19 greater of, one, the value of their cash balance</p> <p>20 account or, two, the value of the benefit they</p> <p>21 would have received under the prior plan pension</p> <p>22 formula had it continued in effect."</p> <p>23 A Okay. Conceptually I follow that.</p> <p>24 Right.</p> <p>25 Q You follow that now, and because</p>	<p style="text-align: right;">Page 119</p> <p>(13:53:14-13:54:22)</p> <p>1 GREFIG</p> <p>2 A Yes.</p> <p>3 Q And you wanted to make sure that he</p> <p>4 was aware of all of the various options in</p> <p>5 transitioning from the traditional formula to</p> <p>6 the new cash balance formula?</p> <p>7 A Yes.</p> <p>8 Q And you made sure that you detailed</p> <p>9 options such as using a lower interest rate in</p> <p>10 the conversion calculation to create larger</p> <p>11 initial account balances?</p> <p>12 A Uh-huh. That's what this says.</p> <p>13 Right. Yes.</p> <p>14 Q And just so you're clear, because</p> <p>15 there's going to be a lot more questions like</p> <p>16 this, I'm not asking what the document says.</p> <p>17 I'm asking that you told him this.</p> <p>18 You made sure that he understood these kinds of</p> <p>19 things, because that's what you would have done,</p> <p>20 knowing how you went about your job.</p> <p>21 MR. RUMELD: I object to the</p> <p>22 form.</p> <p>23 A You know, I can't really answer that</p> <p>24 question, because you're putting me in an area</p> <p>25 like we had before, where you're saying well,</p>
<p style="text-align: right;">Page 118</p> <p>(13:52:28-13:53:14)</p> <p>1 GREFIG</p> <p>2 you've been out of the business, so to speak,</p> <p>3 for awhile, it takes a moment for you to recall</p> <p>4 this, but you knew at the time how all this</p> <p>5 worked?</p> <p>6 A Well, it appears from this document</p> <p>7 that I -- I was more conversant then than I am</p> <p>8 now. Yes.</p> <p>9 Q What I'm actually asking is slightly</p> <p>10 different, is you know that you were conversant</p> <p>11 with it at the time. Otherwise you wouldn't</p> <p>12 have been available to do your job.</p> <p>13 MR. RUMELD: I object to the</p> <p>14 form.</p> <p>15 Q You agree with that?</p> <p>16 A Yes.</p> <p>17 Q You agree that you -- I mean, you</p> <p>18 were a careful fellow in what you did, and you</p> <p>19 took pride in your work, right?</p> <p>20 A Uh-huh.</p> <p>21 Q Yes?</p> <p>22 A Yes.</p> <p>23 Q So you wanted to give your</p> <p>24 understanding to your Woolworth interlocutory,</p> <p>25 Mr. Kiley?</p>	<p style="text-align: right;">Page 120</p> <p>(13:54:26-13:55:22)</p> <p>1 GREFIG</p> <p>2 did this guy do the peer review the way that you</p> <p>3 would have done it. The answer is no. Now, I</p> <p>4 didn't hold Kiley to any kind of a test to</p> <p>5 determine whether or not he --</p> <p>6 Q That's absolutely fine. That's</p> <p>7 not my question, is how well did Mr. Kiley go</p> <p>8 about his job. I'm asking how you discharged</p> <p>9 your job.</p> <p>10 You made sure that Woolworth was</p> <p>11 aware of the various options, including the ones</p> <p>12 that I just detailed here.</p> <p>13 MR. RUMELD: I object to the</p> <p>14 form.</p> <p>15 A To the best of my ability, I tried to</p> <p>16 make sure that they understood what their</p> <p>17 options were.</p> <p>18 Q Including not using a nine percent</p> <p>19 interest rate to start off the initial account</p> <p>20 balance?</p> <p>21 MR. RUMELD: I object to the</p> <p>22 form.</p> <p>23 A Well, to not -- again, I can't answer</p> <p>24 that question. I made them aware of the fact</p> <p>25 that they did not have to use, according to this</p>

<p style="text-align: right;">Page 121</p> <p>(13:55:24-13:56:18)</p> <p>1 GREFIG</p> <p>2 document, a nine percent discount rate to make a</p> <p>3 conversion.</p> <p>4 Q And that they could use lower rates,</p> <p>5 which would create higher initial account</p> <p>6 balances?</p> <p>7 A That's what this document says.</p> <p>8 Right.</p> <p>9 Q I'm not asking you what the document</p> <p>10 says.</p> <p>11 I'm asking you, didn't you make it</p> <p>12 your job to make sure that they were aware that</p> <p>13 that was an option that they had?</p> <p>14 A I --</p> <p>15 MR. RUMELD: I object to the</p> <p>16 form.</p> <p>17 A By use of this document, yes.</p> <p>18 Q That's exactly why we use the</p> <p>19 document, is to refresh your recollection, bring</p> <p>20 it to your attention. That's exactly how I'm</p> <p>21 asking the questions.</p> <p>22 MR. RUMELD: I object to the</p> <p>23 form.</p> <p>24 Q Now, additionally -- okay. I'll take</p> <p>25 that exhibit back from you. Thank you. Show</p>	<p style="text-align: right;">Page 123</p> <p>(13:58:06-13:59:18)</p> <p>1 GREFIG</p> <p>2 required under the Financial Accounting</p> <p>3 Standards Board for their Standard Number 87.</p> <p>4 Q Why were you sending it to Ms. Peck?</p> <p>5 A I don't know for sure. I would guess</p> <p>6 that maybe she requested it or she was the</p> <p>7 contact with the external -- the audit firm.</p> <p>8 Vice-president of human resources. She must</p> <p>9 have requested it.</p> <p>10 Q You mentioned a special -- I'll take</p> <p>11 that back. Thank you.</p> <p>12 You mentioned a special study that</p> <p>13 you did in 1995 that you did not do in 1994,</p> <p>14 when I was asking you questions about how much</p> <p>15 time did you spend on the Woolworth account.</p> <p>16 And because I was on a different</p> <p>17 subject I didn't ask you at that point to tell</p> <p>18 us what you meant by that special study. Could</p> <p>19 you tell us now?</p> <p>20 A Well, your question to me as I recall</p> <p>21 was how much time did I spend on the Woolworth</p> <p>22 account in '94 and '95.</p> <p>23 Q Right. I'm now asking -- I got your</p> <p>24 answer. You mentioned a special study. What</p> <p>25 was that study about?</p>
<p style="text-align: right;">Page 122</p> <p>(13:56:42-13:57:58)</p> <p>1 GREFIG</p> <p>2 you Exhibit 76.</p> <p>3 (Exhibit 76, letter dated</p> <p>4 2/22/95, was marked for</p> <p>5 identification, as of this date.)</p> <p>6 Q This is your February 22, 1995 letter</p> <p>7 to Pat Peck, enclosing the FASB '87 for the</p> <p>8 retirement plan and the Kinney plan; is that</p> <p>9 correct?</p> <p>10 A Yes. That's what it -- that's what</p> <p>11 the cover letter says.</p> <p>12 Q Can you tell me -- can you explain</p> <p>13 what you're doing in sending this to her at this</p> <p>14 time?</p> <p>15 A This is January 31, 1995. Their</p> <p>16 fiscal year was January 31st? The plan year was</p> <p>17 calendar year, but their fiscal year was</p> <p>18 January 31st.</p> <p>19 Q Yes.</p> <p>20 A Yes.</p> <p>21 Q So could you just tell us for</p> <p>22 somebody who watches this or reads this, what</p> <p>23 are you doing functionally by sending her this</p> <p>24 at this time?</p> <p>25 A Well, this is a disclosure that's</p>	<p style="text-align: right;">Page 124</p> <p>(13:59:20-14:01:14)</p> <p>1 GREFIG</p> <p>2 A I presume it was a conversion to a</p> <p>3 cash balance plan.</p> <p>4 Q Okay. So you were talking about a</p> <p>5 study that Mercer did that did projections for</p> <p>6 benefit accrual purposes for --</p> <p>7 A I don't remember. I don't remember.</p> <p>8 You're --</p> <p>9 Q How about look at 77.</p> <p>10 (Exhibit 77, benefit</p> <p>11 illustrations, was marked for</p> <p>12 identification, as of this date.)</p> <p>13 Q And tell me what Exhibit 77 is.</p> <p>14 A Looks like benefit illustrations.</p> <p>15 Q What's being illustrated?</p> <p>16 A Looks like the old career average</p> <p>17 plan, the age-based cash balance, whatever the</p> <p>18 age-based means. That information you provided</p> <p>19 to me before, the credit was based upon service,</p> <p>20 wasn't it?</p> <p>21 Q Yes.</p> <p>22 A So age-based is -- is not what we</p> <p>23 were looking at before, I would guess.</p> <p>24 Q Age-based was something that was</p> <p>25 under consideration as a possibility?</p>

<p style="text-align: right;">Page 125</p> <p>(14:01:16-14:01:58)</p> <p>1 GREFIG</p> <p>2 MR. RUMELD: I object to the</p> <p>3 form.</p> <p>4 Q Correct?</p> <p>5 A I don't know. I mean, age-based --</p> <p>6 Q It doesn't refresh your recollection</p> <p>7 that that's -- was one of the options that was</p> <p>8 being considered?</p> <p>9 A No. No.</p> <p>10 Q It doesn't refresh your recollection?</p> <p>11 A No. And then an integrated cash</p> <p>12 balance plan, which probably meant that it</p> <p>13 was -- had one accrual rate up to a break point</p> <p>14 and another one over the break point.</p> <p>15 Q You see in the left-hand corner it</p> <p>16 says W -- William M. Mercer, Inc.?</p> <p>17 A Yes.</p> <p>18 Q You don't have any reason to doubt</p> <p>19 that you generated the printed portion versus</p> <p>20 the handwritten portion of this?</p> <p>21 A Mercer purportedly produced the</p> <p>22 printed version. Yes.</p> <p>23 Q When I say you I mean you.</p> <p>24 A Me personally? No.</p> <p>25 Q You think you did not produce this?</p>	<p style="text-align: right;">Page 127</p> <p>(14:03:36-14:04:20)</p> <p>1 GREFIG</p> <p>2 Q I'm not asking if you remember. If</p> <p>3 you don't remember --</p> <p>4 A I don't remember creating these</p> <p>5 documents.</p> <p>6 Q Okay. But you're not saying that --</p> <p>7 I mean, you wouldn't have sent him anything you</p> <p>8 didn't understand?</p> <p>9 A I would hope so. Yes.</p> <p>10 Q Do you remember sending him something</p> <p>11 you didn't understand?</p> <p>12 A No.</p> <p>13 Q Okay. So what's showing here is a</p> <p>14 comparison of career average existing plan</p> <p>15 versus -- it says initial cash balance runs.</p> <p>16 Right?</p> <p>17 MR. RUMELD: I object to the</p> <p>18 form.</p> <p>19 A Yes.</p> <p>20 Q Okay. And what this is showing is</p> <p>21 the cost comparison of what the old plan is</p> <p>22 going to cost Woolworth versus the new?</p> <p>23 MR. RUMELD: I object to the</p> <p>24 form.</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 126</p> <p>(14:02:00-14:03:34)</p> <p>1 GREFIG</p> <p>2 A No. That's not my handwriting here.</p> <p>3 Q I'm not asking about the handwriting.</p> <p>4 I said the printed portion of it.</p> <p>5 A No. Not to my recollection.</p> <p>6 Q Okay. I'll take that back from you.</p> <p>7 Thank you.</p> <p>8 Something that did have your</p> <p>9 handwriting on it is -- is 78, which is a March</p> <p>10 15, 1995 five-page fax that you sent Tom Kiley,</p> <p>11 correct?</p> <p>12 (Exhibit 78, fax dated 3/15/95,</p> <p>13 was marked for identification, as of</p> <p>14 this date.)</p> <p>15 A Okay.</p> <p>16 Q You agree with that?</p> <p>17 A I agree that this was sent to Tom</p> <p>18 Kiley from me, with a summary of some</p> <p>19 liabilities. Yes.</p> <p>20 Q Okay. And you created this document?</p> <p>21 A The attachments? No.</p> <p>22 Q So you're saying you know that you</p> <p>23 didn't create them, or you're just saying you're</p> <p>24 not sure?</p> <p>25 A I don't remember -- I don't remember.</p>	<p style="text-align: right;">Page 128</p> <p>(14:04:20-14:05:46)</p> <p>1 GREFIG</p> <p>2 Q Now, why would the initial normal</p> <p>3 cost be less than after the first year?</p> <p>4 A You mean why is the 5.6 million less</p> <p>5 than the 12.4? Is that -- is the normal cost --</p> <p>6 why is the normal cost --</p> <p>7 Q Normal cost after a first year is</p> <p>8 8.5.</p> <p>9 A Wait a minute. Where are you? Okay.</p> <p>10 After first year. I don't know.</p> <p>11 Q Well, isn't that because you know</p> <p>12 that -- you mentioned before that -- that a</p> <p>13 204(h) notice was supposed to go out because</p> <p>14 there was a reduction in the rate of future</p> <p>15 benefit accrual?</p> <p>16 A Uh-huh. Yes.</p> <p>17 Q And you know that the purpose of the</p> <p>18 conversion to a cash balance format was to save</p> <p>19 Woolworth money?</p> <p>20 MR. RUMELD: I object to form.</p> <p>21 A No. I was never -- I don't recall</p> <p>22 ever being told that that was the purpose of any</p> <p>23 conversion.</p> <p>24 Q You were told that Woolworth wanted</p> <p>25 to --</p>

<p style="text-align: right;">Page 129</p> <p>(14:05:46-14:06:30)</p> <p>1 GREFIG</p> <p>2 A Change their plan.</p> <p>3 Q And save money in doing so?</p> <p>4 MR. RUMELD: I object to the</p> <p>5 form.</p> <p>6 A No. No.</p> <p>7 Q You know that for a fact?</p> <p>8 A I don't remember.</p> <p>9 MR. RUMELD: I object to the</p> <p>10 form.</p> <p>11 A I don't remember anyone telling me</p> <p>12 the reason we're doing this.</p> <p>13 Q So you went -- you were involved in</p> <p>14 the design process, and at no time did you</p> <p>15 understand why they wanted to change?</p> <p>16 MR. RUMELD: I object to the</p> <p>17 form.</p> <p>18 A I don't recall the details of what</p> <p>19 was motivating their examination of alternatives</p> <p>20 to their existing plan.</p> <p>21 Q I'm not asking about detail. I'm</p> <p>22 asking big picture.</p> <p>23 You just said no, when I said that</p> <p>24 their purpose was to reduce their cost. You</p> <p>25 know that that's -- was not a purpose?</p>	<p style="text-align: right;">Page 131</p> <p>(14:07:16-14:08:18)</p> <p>1 GREFIG</p> <p>2 So there's nothing that sticks in my</p> <p>3 mind as to a single purpose for them to be</p> <p>4 looking at their plan, other than everybody else</p> <p>5 may be doing it. I mean...</p> <p>6 Q So you do agree that -- withdrawn.</p> <p>7 You knew about -- you understood</p> <p>8 normal cost at the time?</p> <p>9 A Uh-huh. Yes.</p> <p>10 Q So why -- why is it going down?</p> <p>11 A I don't know.</p> <p>12 Q Isn't it because of wear-away?</p> <p>13 MR. RUMELD: I object to the</p> <p>14 form.</p> <p>15 A What's wear-away?</p> <p>16 Q Sir --</p> <p>17 A Wear-away is --</p> <p>18 Q I'm not handing you the document.</p> <p>19 You're trying to reach for the document.</p> <p>20 A Right.</p> <p>21 Q You've spent time being refreshed by</p> <p>22 a number of people since you first got a</p> <p>23 subpoena in this case. I understand this was</p> <p>24 awhile back.</p> <p>25 But wear-away is not a term that's</p>
<p style="text-align: right;">Page 130</p> <p>(14:06:32-14:07:12)</p> <p>1 GREFIG</p> <p>2 MR. RUMELD: I object to the</p> <p>3 form.</p> <p>4 A No. I don't know that that was the</p> <p>5 purpose. That's what I said.</p> <p>6 Q I'm agreeing that -- I'm</p> <p>7 understanding that to be your answer.</p> <p>8 What was the purpose? Not the</p> <p>9 details, the purpose.</p> <p>10 If it was not to reduce cost, sir,</p> <p>11 what was it?</p> <p>12 MR. RUMELD: I object to the</p> <p>13 form.</p> <p>14 A What was the purpose of their desire</p> <p>15 to change their plan.</p> <p>16 Q As expressed to you.</p> <p>17 A I don't recall how it was expressed</p> <p>18 to me.</p> <p>19 Q What was the idea, the message that</p> <p>20 was communicated to you?</p> <p>21 A It --</p> <p>22 Q How -- go ahead.</p> <p>23 A Cash balance plans were the big thing</p> <p>24 back then. You know, everybody was looking at</p> <p>25 cash balance plans.</p>	<p style="text-align: right;">Page 132</p> <p>(14:08:20-14:09:12)</p> <p>1 GREFIG</p> <p>2 completely unknown to you.</p> <p>3 A But wear-away in my mind is related</p> <p>4 to floor offset plans. That's what comes to</p> <p>5 mind when you use that term, because floor --</p> <p>6 Q How about a stall in benefit</p> <p>7 accruals?</p> <p>8 MR. RUMELD: I object to the</p> <p>9 form.</p> <p>10 Q Is that a phrase you know?</p> <p>11 A That -- no.</p> <p>12 Q How about a freeze of future benefit</p> <p>13 accruals in connection with the conversion to</p> <p>14 the cash balance plan?</p> <p>15 A Not in connection with the cash</p> <p>16 balance plan. A freeze in future benefit</p> <p>17 accruals, I understand that term, yes.</p> <p>18 Q Okay.</p> <p>19 A But in connection with the cash</p> <p>20 balance plan? No.</p> <p>21 Q Well, what was the interest crediting</p> <p>22 rate in this cash balance plan going forward?</p> <p>23 A I don't know. It was in one of those</p> <p>24 documents that --</p> <p>25 Q How about if I represent and you</p>

<p style="text-align: right;">Page 133</p> <p>(14:09:14-14:10:06)</p> <p>1 GREFIG</p> <p>2 accept that it was six percent fixed? Can you</p> <p>3 do that?</p> <p>4 A Okay. I'll accept that from you,</p> <p>5 yes, if that's --</p> <p>6 Q How about you accept that the</p> <p>7 interest rate used to convert the accrued</p> <p>8 benefit into an initial account balance was nine</p> <p>9 percent fixed?</p> <p>10 A Okay.</p> <p>11 Q Will you accept that?</p> <p>12 A Okay.</p> <p>13 Q Now, you're a smart guy, spent a lot</p> <p>14 of years training and working as an actuary.</p> <p>15 What effect does that have on a</p> <p>16 participant's benefit going forward?</p> <p>17 MR. RUMELD: I object to the</p> <p>18 form.</p> <p>19 A Which benefit? The accrued benefit</p> <p>20 or the cash balance account?</p> <p>21 Q The benefit going forward in the</p> <p>22 scenario that we have here, where the 12/31/95</p> <p>23 benefit was frozen.</p> <p>24 A Okay. And converted to a cash</p> <p>25 balance.</p>	<p style="text-align: right;">Page 135</p> <p>(14:11:12-14:12:18)</p> <p>1 GREFIG</p> <p>2 benefit?</p> <p>3 A Well, if they're a defined benefit</p> <p>4 plan, then yes. They have -- they have an</p> <p>5 accrued benefit.</p> <p>6 Q Are they a defined benefit plan?</p> <p>7 A That's what my summary says they are,</p> <p>8 and I think they still are, right?</p> <p>9 Q So you're saying that cash balance</p> <p>10 plan does have an accrued benefit?</p> <p>11 A Yes.</p> <p>12 Q So in effect going forward, wouldn't</p> <p>13 there necessarily be a decrease in the benefit</p> <p>14 the first year after the conversion?</p> <p>15 A A decrease in the accrued benefit?</p> <p>16 Q In the benefit -- the participant,</p> <p>17 six -- there's a spread of three between six and</p> <p>18 nine percent, correct?</p> <p>19 A Yes.</p> <p>20 Q And that's never made up in a plan</p> <p>21 that is converted at nine with interest credits</p> <p>22 going forward at six?</p> <p>23 MR. RUMELD: I object to the</p> <p>24 form.</p> <p>25 A Let me think about the mechanics of</p>
<p style="text-align: right;">Page 134</p> <p>(14:10:08-14:11:10)</p> <p>1 GREFIG</p> <p>2 Q Initial opening account balance.</p> <p>3 A Right.</p> <p>4 Q After which it grew at a rate of six</p> <p>5 percent fixed per year.</p> <p>6 A Okay.</p> <p>7 Q What effect will that have on the</p> <p>8 participant's benefit?</p> <p>9 MR. RUMELD: I object to the</p> <p>10 form.</p> <p>11 A It has no affect on the defined</p> <p>12 benefit accrued benefit at the date of</p> <p>13 conversion, and it has no effect on the lump sum</p> <p>14 value the participant would be entitled to upon</p> <p>15 termination of employment. Right? Because</p> <p>16 isn't that where your GATT rate cuts in?</p> <p>17 Q How about directing yourself to my</p> <p>18 question, which is what effect would it have?</p> <p>19 You gave --</p> <p>20 A None.</p> <p>21 Q None. None whatsoever?</p> <p>22 A None. I mean, I'm trying to explain</p> <p>23 to you what my reasoning is behind this. If I</p> <p>24 have no other choice but to respond, none.</p> <p>25 Q Do cash balance plans have an accrued</p>	<p style="text-align: right;">Page 136</p> <p>(14:12:24-14:13:58)</p> <p>1 GREFIG</p> <p>2 this. So converted nine, you add a credit to</p> <p>3 the account balance, according to that schedule</p> <p>4 that we saw.</p> <p>5 And then they add six percent</p> <p>6 interest to the sum of those two. Is that what</p> <p>7 happens at the end of the first year?</p> <p>8 Q Let me try it this way. Somebody is</p> <p>9 40 years old. They have an accrued benefit</p> <p>10 they've earned. Normal retirement age is age</p> <p>11 65.</p> <p>12 You take that accrued benefit age 65</p> <p>13 benefit, and you present value it using nine</p> <p>14 percent.</p> <p>15 A Okay.</p> <p>16 Q 25 years back. Correct? You follow</p> <p>17 so far?</p> <p>18 A Right.</p> <p>19 Q Now, because a cash balance plan has</p> <p>20 an accrued benefit, that means an annuity is</p> <p>21 starting at age 65, right?</p> <p>22 A Right.</p> <p>23 Q So under this conversion, you project</p> <p>24 forward at six percent, right?</p> <p>25 A We accumulate a forward to six</p>

<p style="text-align: right;">Page 137</p> <p>(14:14:00-14:14:56)</p> <p>1 GREFIG</p> <p>2 percent? Okay. So we do that. Then what?</p> <p>3 Q So what's that effect?</p> <p>4 MR. RUMELD: I object to the</p> <p>5 form.</p> <p>6 A It depends upon what the participant</p> <p>7 elects to do with that projection. I mean, if</p> <p>8 they take an annuity, it's never less than the</p> <p>9 benefit that they had when they -- if they --</p> <p>10 Q Let's assume they don't do anything.</p> <p>11 Just compare those two benefits.</p> <p>12 A Well, they got the accrued benefit</p> <p>13 that they had at the date of conversion, taken</p> <p>14 as an annuity, right?</p> <p>15 Q Yes.</p> <p>16 A We never get less than that. And</p> <p>17 then the pay credits that they get into their</p> <p>18 prospectively, those paid credits are</p> <p>19 accumulated forwarded six percent and converted</p> <p>20 back to an annuity.</p> <p>21 Q I'm not adding in pay credits. I'm</p> <p>22 just asking --</p> <p>23 A Why not?</p> <p>24 Q No. It's even more basic. I'm</p> <p>25 asking you, don't you now recall, based on what</p>	<p style="text-align: right;">Page 139</p> <p>(14:16:18-14:17:26)</p> <p>1 GREFIG</p> <p>2 form.</p> <p>3 A There's a three-percent spread, yes.</p> <p>4 Q That is -- that would have the effect</p> <p>5 of in many cases having a value that's about</p> <p>6 half of what it is under the old frozen accrued</p> <p>7 benefit.</p> <p>8 MR. RUMELD: I object to the</p> <p>9 form.</p> <p>10 Q So the person is starting out with a</p> <p>11 benefit that's half the value of the one they</p> <p>12 already accrued.</p> <p>13 A In terms of an expression of the</p> <p>14 account balance, yeah. But as you've explained</p> <p>15 before with your GATT rate, and the fact that</p> <p>16 the employee never loses -- gets anything less</p> <p>17 than his accrued benefit under the DB plan of</p> <p>18 conversion, that that account balance and the</p> <p>19 accrued benefit at time of conversion is his,</p> <p>20 hers.</p> <p>21 Q But I'm not asking about isn't it a</p> <p>22 fact that someone is not going to be losing what</p> <p>23 they already accrued.</p> <p>24 I'm asking, you're starting somebody</p> <p>25 out in a hole, aren't you?</p>
<p style="text-align: right;">Page 138</p> <p>(14:15:02-14:16:16)</p> <p>1 GREFIG</p> <p>2 we're talking about, that there was structurally</p> <p>3 built in a wear-away using a nine percent</p> <p>4 interest rate, where the projection to create</p> <p>5 the cash balance annuity just on day one was</p> <p>6 three percent less.</p> <p>7 A The credit -- the credit to the</p> <p>8 account was three percent less than the interest</p> <p>9 rate used for the conversion. Yes.</p> <p>10 Q But the credit to the account you</p> <p>11 understood was front-loaded insofar as at any</p> <p>12 time to create the accrued benefit from the</p> <p>13 account balance you would project forward at six</p> <p>14 percent?</p> <p>15 A That's the way this document seems to</p> <p>16 say it, yes. That is an interest credit to the</p> <p>17 account.</p> <p>18 The account is the accrued benefit</p> <p>19 converted at nine percent, and that's being</p> <p>20 brought forward at six.</p> <p>21 Q Right. So you compare those two</p> <p>22 things, and there's just in a way no comparison.</p> <p>23 There's a three-percent spread that's baked into</p> <p>24 the cake.</p> <p>25 MR. RUMELD: I object to the</p>	<p style="text-align: right;">Page 140</p> <p>(14:17:28-14:18:10)</p> <p>1 GREFIG</p> <p>2 A Why?</p> <p>3 MR. RUMELD: I object to the</p> <p>4 form.</p> <p>5 A I don't understand how.</p> <p>6 Q Would the benefit a year later --</p> <p>7 while they couldn't get paid less, would the</p> <p>8 benefit one year after the conversion</p> <p>9 potentially be the same?</p> <p>10 A Would the benefit -- would the</p> <p>11 defined benefit be the same?</p> <p>12 Q Yes.</p> <p>13 A Because we keep throwing these terms</p> <p>14 around. Benefit or -- what's the benefit, the</p> <p>15 account balance or the -- or the annuity</p> <p>16 benefit?</p> <p>17 Q You know that under the law and as an</p> <p>18 actuary that the benefit is the accrued benefit,</p> <p>19 the annuity starting at age 65.</p> <p>20 A The annuity benefit. And that never</p> <p>21 gets reduced.</p> <p>22 Q There's two benefit formulas, you</p> <p>23 agree? There's the old plan benefit formula --</p> <p>24 A Correct.</p> <p>25 Q -- that is stopped, frozen at</p>

<p style="text-align: right;">Page 141</p> <p>(14:18:12-14:19:06)</p> <p>1 GREFIG</p> <p>2 12/31/95?</p> <p>3 A Correct.</p> <p>4 Q Then there's a totally new benefit</p> <p>5 formula that is moving forward in time if the</p> <p>6 participant continues to work.</p> <p>7 A Okay.</p> <p>8 Q That's based on an account?</p> <p>9 A With future accruals.</p> <p>10 Q But first you agree it's based on an</p> <p>11 account?</p> <p>12 A The starting point is an account,</p> <p>13 yes.</p> <p>14 Q But the benefit under the law and</p> <p>15 actuarially is actually the projected account to</p> <p>16 age 65 at six percent interest and converted to</p> <p>17 an annuity?</p> <p>18 A No. I don't think that's correct.</p> <p>19 That's a projected benefit. The accrued benefit</p> <p>20 is what the account -- what the participant has</p> <p>21 accrued as of the date of termination, and that</p> <p>22 benefit is paid in the form of an annuity at</p> <p>23 normal retirement age. That's the definition of</p> <p>24 accrued benefit.</p> <p>25 Q Don't you have two accrued benefits,</p>	<p style="text-align: right;">Page 143</p> <p>(14:20:12-14:21:06)</p> <p>1 GREFIG</p> <p>2 Q The old one --</p> <p>3 A Which is an annuity.</p> <p>4 Q But the new one is an annuity in the</p> <p>5 way the plan document is written.</p> <p>6 A Okay.</p> <p>7 Q But it's expressed -- communicated,</p> <p>8 and part of the calculation involves an account,</p> <p>9 but the account is not the benefit. You agree</p> <p>10 with that, don't you?</p> <p>11 A When we use the term accrued benefit</p> <p>12 under a defined benefit plan, we're talking</p> <p>13 about an annuity benefit and not an account</p> <p>14 balance. Correct. I agree.</p> <p>15 Q And so you now are understanding --</p> <p>16 maybe I didn't do it in a good way, but you're</p> <p>17 now understanding that there are two accrued</p> <p>18 annuity age 65 benefits once you do the</p> <p>19 conversion that are always competing.</p> <p>20 You never lose the one you already</p> <p>21 accrued, but potentially you could have a bigger</p> <p>22 accrued benefit under the cash balance formula</p> <p>23 if you worked long enough.</p> <p>24 A Okay.</p> <p>25 MR. RUMELD: I object to the</p>
<p style="text-align: right;">Page 142</p> <p>(14:19:08-14:20:10)</p> <p>1 GREFIG</p> <p>2 and you get the greater of?</p> <p>3 You have -- the 40-year old we're</p> <p>4 still talking about has the accrued benefit up</p> <p>5 until that point in time, 12/31/95, under the</p> <p>6 old formula, and that never changes, correct?</p> <p>7 A Yes. Correct.</p> <p>8 Q Then the participant has another</p> <p>9 benefit, that they obviously only get one of</p> <p>10 them, but if you take that benefit, the way you</p> <p>11 create it is there's an account, and it's</p> <p>12 projected to age 65 and converted to an annuity.</p> <p>13 And that annuity under the cash</p> <p>14 balance formula is compared to the annuity under</p> <p>15 the traditional formula, and my question -- you</p> <p>16 agree with that?</p> <p>17 A I'm not understanding the -- they've</p> <p>18 got two benefits. They've got one that they had</p> <p>19 under the old plan, and they got another benefit</p> <p>20 that is as a result of future accruals.</p> <p>21 Q No. There's another benefit that is</p> <p>22 the result of the conversion and the plan</p> <p>23 contract that gives them the right to the</p> <p>24 greater of these two accrued benefits.</p> <p>25 A Which two accrued benefits now?</p>	<p style="text-align: right;">Page 144</p> <p>(14:21:06-14:21:52)</p> <p>1 GREFIG</p> <p>2 form.</p> <p>3 Q You agree with that?</p> <p>4 A Well, I'm following you. I'm not</p> <p>5 sure I agree.</p> <p>6 Q Well, what is -- what is wrong</p> <p>7 with --</p> <p>8 A Pencil to paper and --</p> <p>9 Q Well, I've got a calculator. I've</p> <p>10 got paper.</p> <p>11 Do you want to take a minute to do</p> <p>12 some calculations?</p> <p>13 A Yeah, or you do it and explain to me</p> <p>14 what it is that you're doing, because this term</p> <p>15 accrued benefit is just -- you know, I'm</p> <p>16 focusing on accrued benefit, and we've brought</p> <p>17 open an account balance. That gets projected.</p> <p>18 Then we have future accruals, and they get</p> <p>19 projected. Okay. And then --</p> <p>20 Q Your account balance grows, but at</p> <p>21 any moment the accrued benefit under the cash</p> <p>22 balance formula is not your account, it's the</p> <p>23 age 65 --</p> <p>24 A Right.</p> <p>25 Q -- annuity. You've got that, right?</p>

<p style="text-align: right;">Page 145</p> <p>(14:21:54-14:22:56)</p> <p>1 GREFIG</p> <p>2 You agree with that?</p> <p>3 A That's right. But I'm -- we're still</p> <p>4 on making a connection. So we get to 65. We</p> <p>5 take the cash balance at the date of conversion.</p> <p>6 We add in future accruals.</p> <p>7 Q If any.</p> <p>8 A If any. They're all brought forward</p> <p>9 with six percent interest, and that account</p> <p>10 balance is converted back to an annuity.</p> <p>11 But in no event can that annuity be</p> <p>12 less than the defined benefit annuity that</p> <p>13 existed at the day of conversion. Is that what</p> <p>14 we're saying?</p> <p>15 Q I agree with what you're saying.</p> <p>16 A Okay.</p> <p>17 Q And what I'm saying is the -- there</p> <p>18 are two annuities that have to be compared.</p> <p>19 A Correct.</p> <p>20 Q What I'm asking is if the participant</p> <p>21 doesn't -- they get into the plan and they're</p> <p>22 converted, but then they quit the next day.</p> <p>23 Those two accrued benefits, how do</p> <p>24 they compare?</p> <p>25 A They're equal.</p>	<p style="text-align: right;">Page 147</p> <p>(14:24:10-14:24:44)</p> <p>1 GREFIG</p> <p>2 A How do we convert it though?</p> <p>3 Q Well, at 4.17 or six percent under</p> <p>4 the plan document.</p> <p>5 A Okay.</p> <p>6 Q We're talking about the conversion at</p> <p>7 age 65.</p> <p>8 A Right.</p> <p>9 Q We convert at six percent.</p> <p>10 MR. RUMELD: I object to the</p> <p>11 form.</p> <p>12 A Okay. And then --</p> <p>13 Q And then nothing.</p> <p>14 A Oh, no.</p> <p>15 Q That's my --</p> <p>16 A What happened to the GATT rate?</p> <p>17 Q We're not talking about paying</p> <p>18 anybody yet.</p> <p>19 A Well, his accrued benefit --</p> <p>20 Q We'll get to that. We'll get to</p> <p>21 that. I just want to compare the tale of two</p> <p>22 cities, the tale of two accrued benefits.</p> <p>23 A We have a six -- we have a six</p> <p>24 percent annuity at 65 now.</p> <p>25 Q Started out though --</p>
<p style="text-align: right;">Page 146</p> <p>(14:22:58-14:24:10)</p> <p>1 GREFIG</p> <p>2 Q No. One starts out using a nine</p> <p>3 percent -- takes -- takes -- takes the accrued</p> <p>4 benefit under the old formula --</p> <p>5 A Yes.</p> <p>6 Q -- and brings it back 25 years at</p> <p>7 nine percent.</p> <p>8 A Correct.</p> <p>9 Q And then the participant says, thank</p> <p>10 you for giving me a greater of benefit, where I</p> <p>11 can get the old accrued or I can get this new</p> <p>12 thing.</p> <p>13 I'd like to know what my accrued</p> <p>14 benefit is under this second formula. And you</p> <p>15 say to him, well, the way we started you out was</p> <p>16 we took your other benefit, just as a measure.</p> <p>17 We didn't change it. It's over there. We used</p> <p>18 it as a measure. We reduced it by nine percent</p> <p>19 to give you an opening balance, 25 years.</p> <p>20 Then the guy says well, I'd like to</p> <p>21 know what is my cash balance annuity if I wait</p> <p>22 to take it 25 years at age 65.</p> <p>23 And you would say -- get out the</p> <p>24 calculator, plug in six percent projected. Then</p> <p>25 convert it.</p>	<p style="text-align: right;">Page 148</p> <p>(14:24:48-14:25:42)</p> <p>1 GREFIG</p> <p>2 A With a nine percent account cash</p> <p>3 balance. Right.</p> <p>4 Q So you understand this concept of</p> <p>5 wear-away, that essentially this other accrued</p> <p>6 benefit, it may turn out with future accruals to</p> <p>7 be bigger than the old, but it's impossible that</p> <p>8 on day one it's anything other than</p> <p>9 significantly in the hole, because you started</p> <p>10 and took the original and you reduced it at nine</p> <p>11 percent, and then you converted it back to an</p> <p>12 annuity form at six percent, so there's a</p> <p>13 three-percent spread.</p> <p>14 MR. RUMELD: I object to the</p> <p>15 form.</p> <p>16 A But it -- but that annuity is never</p> <p>17 less than the accrued annuity that he had at the</p> <p>18 date of conversion.</p> <p>19 Q You're mistaking the question of</p> <p>20 payment with just the abstract question of the</p> <p>21 comparison between the two.</p> <p>22 A You said the employee asked about his</p> <p>23 entitlement. So I'm bringing it back to the</p> <p>24 issue of entitlement.</p> <p>25 Q I just want to know what my accrued</p>

<p style="text-align: right;">Page 149</p> <p>(14:25:44-14:26:46)</p> <p>1 GREFIG</p> <p>2 benefit is.</p> <p>3 A What is his annuity entitlement at</p> <p>4 age 65.</p> <p>5 Q And in order to give him the</p> <p>6 bottom-line answer, and this is where we're</p> <p>7 not --</p> <p>8 A Not connecting. Right.</p> <p>9 Q Because I think we understand each</p> <p>10 other, but we're not connecting.</p> <p>11 A I understand the words.</p> <p>12 Q Before you give him the bottom line,</p> <p>13 he has the entitlement to the comparison. Do</p> <p>14 you agree with that?</p> <p>15 A Oh.</p> <p>16 Q That's all I'm talking about, is how</p> <p>17 do those two benefits compare.</p> <p>18 MR. RUMELD: I object to the</p> <p>19 form.</p> <p>20 A The two benefits -- the annuity</p> <p>21 benefit that you just calculated by bringing</p> <p>22 cash balance forward at six and converting to</p> <p>23 six is going to be less than the accrued benefit</p> <p>24 entitlement under the prior -- under the prior</p> <p>25 plan.</p>	<p style="text-align: right;">Page 151</p> <p>(14:27:38-14:28:24)</p> <p>1 GREFIG</p> <p>2 A And any lump sum that he's entitled</p> <p>3 to has to be paid out of the GATT rate or PBGC</p> <p>4 rate or whatever rate is appropriate.</p> <p>5 So the -- the fact that -- forget</p> <p>6 future accruals at all. Just let's say we</p> <p>7 convert the account -- convert to a cash</p> <p>8 balance.</p> <p>9 That employee you just talked about,</p> <p>10 that they quit the day after the conversion,</p> <p>11 nothing has changed for him.</p> <p>12 Q How about the employee that works for</p> <p>13 years and doesn't accrue any new benefits</p> <p>14 because his account balance has started in the</p> <p>15 hole?</p> <p>16 MR. RUMELD: I object to the</p> <p>17 form.</p> <p>18 A You keep saying the account balance</p> <p>19 is started in the hole, but I don't understand</p> <p>20 how can an account balance get started in the</p> <p>21 hole --</p> <p>22 Q Let's talk about it.</p> <p>23 A -- the way it's calculated under the</p> <p>24 plan.</p> <p>25 Q Let's talk about it. If the GATT</p>
<p style="text-align: right;">Page 150</p> <p>(14:26:46-14:27:36)</p> <p>1 GREFIG</p> <p>2 Q And that is a mathematical truism.</p> <p>3 It'll always be that way, right?</p> <p>4 A I believe so.</p> <p>5 Q You understood that at the time?</p> <p>6 MR. RUMELD: I object to the</p> <p>7 form.</p> <p>8 A You mean at the time this study was</p> <p>9 going on?</p> <p>10 Q At the time you were involved in the</p> <p>11 conversion of the Woolworth plan to a cash</p> <p>12 balance plan.</p> <p>13 A If we did that type of analysis, yes.</p> <p>14 I would have understood it, but the type of</p> <p>15 analysis you're going through now is not.</p> <p>16 Q How could you possibly not have</p> <p>17 understood that as one of the most fundamental</p> <p>18 elements of the conversion itself?</p> <p>19 A Because you have --</p> <p>20 MR. RUMELD: I object to the</p> <p>21 form.</p> <p>22 A You have all these other overrides</p> <p>23 out there. The employee's accrued benefit can't</p> <p>24 be reduced.</p> <p>25 Q But the employee --</p>	<p style="text-align: right;">Page 152</p> <p>(14:28:26-14:29:16)</p> <p>1 GREFIG</p> <p>2 rate or the PBGC or 30-year treasury bonds or</p> <p>3 the ERISA required rate -- you understand those</p> <p>4 are all synonyms for the same idea, right?</p> <p>5 A Those are the overrides that come</p> <p>6 into this -- into this calculation. Yes.</p> <p>7 Q If I am a participant and I on day</p> <p>8 one ask for payment in this conversion --</p> <p>9 A A lump sum payment.</p> <p>10 Q A lump sum payment.</p> <p>11 -- my lump sum payment is going to be</p> <p>12 a whole lot more than my opening account</p> <p>13 balance.</p> <p>14 A Okay.</p> <p>15 Q You agree with that?</p> <p>16 A Yes.</p> <p>17 Q You understood that at the time?</p> <p>18 A Yes.</p> <p>19 Q You made sure that the Foot Locker</p> <p>20 people understood that at the time?</p> <p>21 A Presumably.</p> <p>22 Q You have no reason to doubt that, do</p> <p>23 you?</p> <p>24 A No, but I have no recollection of</p> <p>25 making a major issue of it.</p>

<p style="text-align: right;">Page 153</p> <p>(14:29:18-14:30:08)</p> <p>1 GREFIG</p> <p>2 Q It wasn't a major issue. It wasn't a</p> <p>3 major issue if participants worked and didn't</p> <p>4 accrue anything new for a period of potentially</p> <p>5 years?</p> <p>6 A This was a fact of the structure of</p> <p>7 the entire plan, as that summary that you showed</p> <p>8 me before would have pointed out.</p> <p>9 Q The fact of no accrual?</p> <p>10 A These are the issues. I don't know.</p> <p>11 Did it say anything in there about no accruals?</p> <p>12 Q I'm not asking the document.</p> <p>13 MS. WALWORTH: Excuse me one</p> <p>14 second. Just for our court</p> <p>15 reporter's sake, if you wait until he</p> <p>16 finishes his question and --</p> <p>17 MR. GOTTESDIENER: Please stop</p> <p>18 interrupting.</p> <p>19 MS. WALWORTH: -- he'll give</p> <p>20 you the same courtesy, I know.</p> <p>21 THE WITNESS: Sorry.</p> <p>22 MS. WALWORTH: That's all</p> <p>23 right.</p> <p>24 Q You agree that you understood at the</p> <p>25 time that a participant who was started out at a</p>	<p style="text-align: right;">Page 155</p> <p>(14:31:42-14:32:58)</p> <p>1 GREFIG</p> <p>2 Q Now, he wasn't the one who was doing</p> <p>3 the day-to-day work in the conversion planning</p> <p>4 process?</p> <p>5 A No.</p> <p>6 Q You were?</p> <p>7 A I was and Jim Cassidy.</p> <p>8 Q And if invoices went out, such as an</p> <p>9 invoice in March of 1995, that said time spent</p> <p>10 preparing for and attending the cost reduction</p> <p>11 strategy meeting, approximately \$9,600, has not</p> <p>12 been charged to you, that would have been</p> <p>13 something you made sure was an accurate</p> <p>14 statement?</p> <p>15 A I guess so.</p> <p>16 MR. RUMELD: I object to form.</p> <p>17 A Yes, yes.</p> <p>18 Q Hearing that, does that refresh your</p> <p>19 recollection that the conversion to the cash</p> <p>20 balance plan was part of a cost reduction</p> <p>21 strategy?</p> <p>22 A No.</p> <p>23 (Exhibit 79, summary of cash</p> <p>24 balance statement, was marked for</p> <p>25 identification, as of this date.)</p>
<p style="text-align: right;">Page 154</p> <p>(14:30:12-14:31:40)</p> <p>1 GREFIG</p> <p>2 nine percent interest rate, with only a</p> <p>3 guaranteed six percent projection to retirement,</p> <p>4 was always starting out under the new formula in</p> <p>5 a hole vis-a-vis the old formula benefit.</p> <p>6 MR. RUMELD: I object to the</p> <p>7 form.</p> <p>8 A Relative to the old benefit formula.</p> <p>9 Q For purposes of comparison prior to</p> <p>10 payment.</p> <p>11 A Yes. I think this is a source of</p> <p>12 confusion here.</p> <p>13 Q I'll withdraw the question. Did you</p> <p>14 work -- the invoices that Mercer sent to Foot</p> <p>15 Locker, you worked on those invoices, didn't</p> <p>16 you?</p> <p>17 A In all likelihood I did, because as</p> <p>18 we described before with the structure internal</p> <p>19 to Mercer, the account manager sent out the</p> <p>20 bills, but the people who were more senior in</p> <p>21 the -- either the retirement practice or the</p> <p>22 health and welfare practice would prepare those</p> <p>23 fee statements for Mark Brandes for his review,</p> <p>24 and I think he's the one that sent the fee</p> <p>25 statements out.</p>	<p style="text-align: right;">Page 156</p> <p>(14:32:58-14:34:02)</p> <p>1 GREFIG</p> <p>2 Q 79 is entitled Woolworth Corporation</p> <p>3 summary of cash balance study; do you see that?</p> <p>4 A Yes.</p> <p>5 Q The special study that you were</p> <p>6 talking about before we broke for lunch is the</p> <p>7 cash balance study, right?</p> <p>8 MR. RUMELD: I object to the</p> <p>9 form.</p> <p>10 A The study that I made reference to</p> <p>11 that took place in 1995?</p> <p>12 Q That's right.</p> <p>13 A Yes. That would have been the cash</p> <p>14 balance study.</p> <p>15 Q And you recognize this as one of the</p> <p>16 documents that Mercer produced in performing</p> <p>17 that study?</p> <p>18 MR. RUMELD: I object to the</p> <p>19 form.</p> <p>20 A It appeared to be, yes.</p> <p>21 Q And if you look at the sixth bullet</p> <p>22 point down?</p> <p>23 A Okay.</p> <p>24 Q "Cost savings under any formula would</p> <p>25 be limited to a reduction in normal cost. There</p>

<p style="text-align: right;">Page 157</p> <p>(14:34:06-14:35:02)</p> <p>1 GREFIG</p> <p>2 will not be any reduction in accrued liability.</p> <p>3 "Generally, there will be a</p> <p>4 significant reduction in normal cost for one or</p> <p>5 two years, followed by a smaller savings in cost</p> <p>6 after the initial savings wear-away." Do you</p> <p>7 see that there?</p> <p>8 A Yes, I do.</p> <p>9 Q That was written by you?</p> <p>10 A I don't think so.</p> <p>11 Q Jim Cassidy, sir, is still today not</p> <p>12 even an enrolled actuary, right?</p> <p>13 A I don't know. I don't know what his</p> <p>14 status is now.</p> <p>15 Q You know that he never became an</p> <p>16 enrolled actuary?</p> <p>17 A That I did not know. I know he left</p> <p>18 Mercer.</p> <p>19 Q Well, didn't he leave Mercer, sir,</p> <p>20 because he gave you some bum numbers?</p> <p>21 MR. RUMELD: I object to the</p> <p>22 form.</p> <p>23 A He may have been unhappy at Mercer</p> <p>24 because of some things that may have happened.</p> <p>25 Q Sir, didn't you tell Steve Cohen that</p>	<p style="text-align: right;">Page 159</p> <p>(14:35:34-14:36:18)</p> <p>1 GREFIG</p> <p>2 A I said he may have left because of an</p> <p>3 issue over some numbers.</p> <p>4 Q No, no.</p> <p>5 A Maybe that's why he said bum numbers.</p> <p>6 I said some numbers, not bum numbers.</p> <p>7 Q You told Mr. Cohen, did you not, that</p> <p>8 Mr. Cassidy gave you some numbers that were bad,</p> <p>9 they were badly done?</p> <p>10 A Okay.</p> <p>11 Q You agree with that, that you told</p> <p>12 him that?</p> <p>13 A That was the intent of the comment,</p> <p>14 yes.</p> <p>15 Q And that was a fact. You were</p> <p>16 telling the truth to Mr. Cohen?</p> <p>17 A Yes.</p> <p>18 MR. RUMELD: I object to form.</p> <p>19 Q That is why you expressed your</p> <p>20 unhappiness to Mr. Cassidy?</p> <p>21 A Yes.</p> <p>22 Q And it was Woolworth's numbers?</p> <p>23 A I don't recall whether this was</p> <p>24 Woolworth or another client, but they were -- it</p> <p>25 was an issue between Cassidy and myself, yes.</p>
<p style="text-align: right;">Page 158</p> <p>(14:35:06-14:35:34)</p> <p>1 GREFIG</p> <p>2 Cassidy gave you bum numbers?</p> <p>3 A I don't -- you -- I don't remember</p> <p>4 the word bum.</p> <p>5 Q How about --</p> <p>6 A I said there was an issue over some</p> <p>7 numbers.</p> <p>8 Q That he gave you?</p> <p>9 A Yes.</p> <p>10 Q Could I have your attention, please,</p> <p>11 instead of the document?</p> <p>12 A Yes.</p> <p>13 Q Didn't you tell Mr. Cohen that?</p> <p>14 A I didn't use the word bum numbers. I</p> <p>15 said there was --</p> <p>16 Q Other than the word bum, bad numbers?</p> <p>17 MR. RUMELD: I object to the</p> <p>18 form.</p> <p>19 Q The concepts -- other than the word</p> <p>20 bum --</p> <p>21 A Yes.</p> <p>22 Q You told Mr. Cohen that?</p> <p>23 A Right.</p> <p>24 Q And you told him that because it was</p> <p>25 true?</p>	<p style="text-align: right;">Page 160</p> <p>(14:36:20-14:37:22)</p> <p>1 GREFIG</p> <p>2 Q Don't you recall telling Mr. Cohen</p> <p>3 that you think that they were Woolworth numbers?</p> <p>4 A No. I don't remember having said</p> <p>5 that to him.</p> <p>6 Q When did Mr. Cassidy leave? How soon</p> <p>7 after -- withdrawn. How -- when did he leave?</p> <p>8 A I don't know. I don't know whether</p> <p>9 he left before I retired or after I retired, to</p> <p>10 be honest with you. I don't -- I don't recall</p> <p>11 when those changes took place.</p> <p>12 Q Your understanding of these matters</p> <p>13 as the enrolled actuary and as the superior to</p> <p>14 Mr. Cassidy was better than Mr. Cassidy's,</p> <p>15 wasn't it?</p> <p>16 A Understanding of these -- I don't</p> <p>17 know. The -- at that point in time the</p> <p>18 understanding of the concepts that were</p> <p>19 involved, we probably had an equal knowledge</p> <p>20 base.</p> <p>21 Q How about chops? Yours were much</p> <p>22 better than Mr. Cassidy?</p> <p>23 A Chops.</p> <p>24 Q Your technique, your ability to</p> <p>25 produce projections and runs. There was nothing</p>

<p style="text-align: right;">Page 161</p> <p>(14:37:26-14:38:20)</p> <p>1 GREFIG</p> <p>2 that -- there was nothing that you --</p> <p>3 A Excuse me. I didn't run a computer</p> <p>4 at Mercer. I didn't know how to run a computer,</p> <p>5 and in fact I never ran a computer --</p> <p>6 Q I'm talking about the calculations.</p> <p>7 A -- ever in my life.</p> <p>8 Q I'm talking about the ability to</p> <p>9 perform the calculations.</p> <p>10 A That I was better than he was?</p> <p>11 Q You were the enrolled actuary for the</p> <p>12 plan.</p> <p>13 A We're talking about calculations for</p> <p>14 a cash balance plan, and whether I was better</p> <p>15 able to do it than Jim Cassidy? The answer is</p> <p>16 no. I think we were equally capable.</p> <p>17 Q Okay. So there was nothing however</p> <p>18 that he could do that you couldn't replicate?</p> <p>19 A Yes.</p> <p>20 Q And there was nothing he was doing</p> <p>21 that you didn't understand and couldn't perform</p> <p>22 yourself, correct?</p> <p>23 A Correct.</p> <p>24 Q And you made sure that Foot Locker</p> <p>25 and Mr. Kiley in particular, when you</p>	<p style="text-align: right;">Page 163</p> <p>(14:39:12-14:40:10)</p> <p>1 GREFIG</p> <p>2 without significant personal savings. Any</p> <p>3 reduction in cost introduced in a new plan</p> <p>4 design will worsen this situation." That's what</p> <p>5 it says there, right?</p> <p>6 A Okay. Yes.</p> <p>7 Q And you made sure that this was</p> <p>8 communicated to Foot Locker as -- Woolworth as</p> <p>9 it considered its options --</p> <p>10 MR. RUMELD: I object to the</p> <p>11 form.</p> <p>12 Q -- in converting the plan?</p> <p>13 A Yes. But I still don't think I</p> <p>14 prepared --</p> <p>15 Q There's no -- okay. There's no</p> <p>16 question pending. You don't think you prepared</p> <p>17 that?</p> <p>18 A No.</p> <p>19 Q But why are you saying that -- you</p> <p>20 think you didn't prepare -- withdrawn.</p> <p>21 You're referring to an attachment.</p> <p>22 You're not referring to the prose on the first</p> <p>23 page we're talking about.</p> <p>24 A I'm talk about the first page as</p> <p>25 well, because if you look at the signature down</p>
<p style="text-align: right;">Page 162</p> <p>(14:38:22-14:39:08)</p> <p>1 GREFIG</p> <p>2 communicated with him, understood the</p> <p>3 implication of the various formula designs that</p> <p>4 you were looking at for Foot Locker?</p> <p>5 MR. RUMELD: I object to the</p> <p>6 form.</p> <p>7 A Yes.</p> <p>8 Q And you were -- withdrawn.</p> <p>9 You see on the last bullet point</p> <p>10 here, it says sample -- let me ask you one more</p> <p>11 question, if you'd look up for a moment.</p> <p>12 Mr. Cassidy didn't send anything to</p> <p>13 Foot Locker on his own without making sure it</p> <p>14 was okay with you?</p> <p>15 MR. RUMELD: I object to the</p> <p>16 form.</p> <p>17 A I hope not. He should not have done</p> <p>18 so.</p> <p>19 Q And in the ordinary course you saw</p> <p>20 everything that went out?</p> <p>21 A In the ordinary course of business,</p> <p>22 correct. Yes.</p> <p>23 Q This last bullet point says, "Sample</p> <p>24 employees show that the current formula is</p> <p>25 insufficient to replace an employee's income</p>	<p style="text-align: right;">Page 164</p> <p>(14:40:12-14:41:06)</p> <p>1 GREFIG</p> <p>2 on the lower left, my initials aren't in there,</p> <p>3 and that's contrary to the way that our</p> <p>4 documents were prepared.</p> <p>5 Our documents had in accordance with</p> <p>6 peer review procedures the initials of the</p> <p>7 preparer, meaning the administrative assistant,</p> <p>8 the initials of the one consultant, and the</p> <p>9 initials of the peer reviewer.</p> <p>10 Q But very often documents would go out</p> <p>11 and be on somebody else's computer that you</p> <p>12 participated in authoring, right?</p> <p>13 A This is somebody else's computer.</p> <p>14 This should not have gone out unless they were</p> <p>15 in accordance with the peer review process that</p> <p>16 was in place.</p> <p>17 Q Unless they were in accordance with</p> <p>18 your views of the matter?</p> <p>19 A Yes.</p> <p>20 Q Looking at Exhibit 80.</p> <p>21 (Exhibit 80, document, was</p> <p>22 marked for identification, as of this</p> <p>23 date.)</p> <p>24 A Document should have been reviewed.</p> <p>25 Q 80 is a document that has your</p>

<p style="text-align: right;">Page 165</p> <p>(14:41:10-14:43:12)</p> <p>1 GREFIG</p> <p>2 handwriting on it, does it not?</p> <p>3 A Looks like it.</p> <p>4 Q The edits on the second page -- if</p> <p>5 you would turn to the second page, sir. These</p> <p>6 are your edits, right?</p> <p>7 A It looks like my handwriting, yes.</p> <p>8 Q If you would just flip through the</p> <p>9 pages where there's a couple more pages of</p> <p>10 handwriting, and just confirm that that's your</p> <p>11 handwriting.</p> <p>12 A Yes. It looks like my handwriting.</p> <p>13 Q Okay. I'll take that back. And</p> <p>14 you're aware -- withdrawn. Exhibit 81.</p> <p>15 (Exhibit 81, document, was</p> <p>16 marked for identification, as of this</p> <p>17 date.)</p> <p>18 Q Whose handwriting is that, sir?</p> <p>19 A I don't know.</p> <p>20 (Exhibit 82, e-mail, was marked</p> <p>21 for identification, as of this date.)</p> <p>22 Q Exhibit 82 is an e-mail from you to</p> <p>23 cash balance network, is it not?</p> <p>24 A Yes. This is what the document says,</p> <p>25 yes.</p>	<p style="text-align: right;">Page 167</p> <p>(14:45:06-14:46:32)</p> <p>1 GREFIG</p> <p>2 form.</p> <p>3 A Is that what I asked? Lump sum</p> <p>4 election. Okay. Okay. Yes.</p> <p>5 Q You don't doubt what I just asked</p> <p>6 you?</p> <p>7 MR. RUMELD: I object to the</p> <p>8 form.</p> <p>9 A No. I mean, that's what -- that's</p> <p>10 what's written on the first page.</p> <p>11 Q But I'm asking you -- I'm not</p> <p>12 inquiring of the e-mail.</p> <p>13 I'm asking you that you don't have</p> <p>14 any doubt that -- that you received these</p> <p>15 responses, and the responses you estimated to be</p> <p>16 mixed opinions as to whether the manner in which</p> <p>17 the plan was communicated influenced lump sum</p> <p>18 elections.</p> <p>19 A Okay. Yes.</p> <p>20 Q And you also said that matters that</p> <p>21 could impact on the employee decision by what</p> <p>22 benefit form to elect included showing only</p> <p>23 account balances on the benefit statement rather</p> <p>24 than the annuity?</p> <p>25 MR. RUMELD: I object to the</p>
<p style="text-align: right;">Page 166</p> <p>(14:43:14-14:45:06)</p> <p>1 GREFIG</p> <p>2 Q And you're looking at that and</p> <p>3 recalling that you were asking in April of 1995</p> <p>4 other actuaries in this cash balance network to</p> <p>5 provide you with input, so you could in turn</p> <p>6 provide Foot Locker with more information about</p> <p>7 their options in the design of the new plan,</p> <p>8 correct?</p> <p>9 A That's what it looks like, yes. Let</p> <p>10 me look at this.</p> <p>11 Q As you're reading this, is this</p> <p>12 bringing back some memories of having sent this</p> <p>13 e-mail and asked for input?</p> <p>14 A No. It doesn't bring back anything</p> <p>15 to memory. I mean, obviously this was sent to</p> <p>16 me and they -- the phrase cash balance network,</p> <p>17 that rings a bell, but the rest of it is -- I</p> <p>18 don't remember it at all.</p> <p>19 Q Well, you agree that you did an</p> <p>20 informal survey, and that you got five responses</p> <p>21 covering eight cash balance plans and two plans</p> <p>22 with lump sum options, and that opinions were</p> <p>23 mixed as to whether the manner in which the plan</p> <p>24 was communicated influenced lump sum elections?</p> <p>25 MR. RUMELD: I object to the</p>	<p style="text-align: right;">Page 168</p> <p>(14:46:32-14:47:52)</p> <p>1 GREFIG</p> <p>2 form.</p> <p>3 Q Rather than annuity values.</p> <p>4 A I said that or someone else said</p> <p>5 that?</p> <p>6 Q Look at the last column.</p> <p>7 A Showing only account balances on the</p> <p>8 benefit statement rather than annuity values.</p> <p>9 Opinions were mixed.</p> <p>10 So that's a summary of responses that</p> <p>11 I get. Some other matters that could impact on</p> <p>12 the employee decision were as I enumerate them</p> <p>13 there, but those were responses from the people</p> <p>14 where I was requesting their opinion.</p> <p>15 Q And you made sure that you and</p> <p>16 discussing with Mr. Kiley design options, that</p> <p>17 he understood matters that could impact the form</p> <p>18 that people took?</p> <p>19 A Probably, yes.</p> <p>20 Q I'll take that back from you. Thank</p> <p>21 you.</p> <p>22 So can you tell me, with respect to</p> <p>23 the form that people could elect, if you recall</p> <p>24 the earlier retirement subsidy under the old</p> <p>25 Woolworth plan.</p>

<p style="text-align: right;">Page 169</p> <p>(14:47:58-14:49:20)</p> <p>1 GREFIG</p> <p>2 A I don't recall the subsidy.</p> <p>3 Q You don't recall there was a subsidy</p> <p>4 though, right?</p> <p>5 A No, I do not, other than what you've</p> <p>6 shown me this morning.</p> <p>7 Q If I tell you that -- I'll show you</p> <p>8 just to make sure that we have -- the '95</p> <p>9 valuation, Exhibit 71. If you look at Page 40,</p> <p>10 Section 4.2?</p> <p>11 A Page 40?</p> <p>12 Q Page 40.</p> <p>13 A Okay. January 3, 1995. Okay. Page</p> <p>14 40.</p> <p>15 Q 4.2. You see at the early retirement</p> <p>16 reduction. Are you there?</p> <p>17 A No.</p> <p>18 Q Okay.</p> <p>19 A I'm in -- on Page 40. I've got</p> <p>20 payable at early. I've got minimum. I've got</p> <p>21 debt. Page 39 is retirement benefits.</p> <p>22 Q Page 40.</p> <p>23 A Okay.</p> <p>24 Q Payable at an early retirement.</p> <p>25 A Okay. I'm sorry. Go ahead. Right.</p>	<p style="text-align: right;">Page 171</p> <p>(14:50:18-14:51:18)</p> <p>1 GREFIG</p> <p>2 Q Well, if somebody asked you at a</p> <p>3 cocktail party, as a friend, and they had that</p> <p>4 as an option or taking -- taking -- or taking</p> <p>5 a -- waiting to take their benefit, what would</p> <p>6 you tell them?</p> <p>7 A I would say --</p> <p>8 MR. RUMELD: I object to the</p> <p>9 form.</p> <p>10 A -- look at the crossover point. If</p> <p>11 you take the early retirement benefit now, and</p> <p>12 take it paid for life, when would the cumulative</p> <p>13 benefits in receipt exceed what you would have</p> <p>14 gotten had you waited until age 65.</p> <p>15 And now you've got a crossover</p> <p>16 horizon. And without getting the guy bogged</p> <p>17 down in financials, he can determine whether or</p> <p>18 not gee, I can get this amount paid for</p> <p>19 17 years, even though I take a small reduction</p> <p>20 now.</p> <p>21 And that's the way I would respond to</p> <p>22 a plan participant who was not a client's</p> <p>23 employee.</p> <p>24 Q If a large number of people</p> <p>25 terminated and eventually elected to take this</p>
<p style="text-align: right;">Page 170</p> <p>(14:49:22-14:50:14)</p> <p>1 GREFIG</p> <p>2 Q So the early retirement reduction for</p> <p>3 a person with at least 15 years of credit is one</p> <p>4 third of one percent for each month that</p> <p>5 retirement is prior to age 65, right?</p> <p>6 MR. RUMELD: I object to the</p> <p>7 form.</p> <p>8 A Yes.</p> <p>9 Q In 1995 you would have considered</p> <p>10 that a valuable benefit?</p> <p>11 MR. RUMELD: I object to the</p> <p>12 form.</p> <p>13 A Four and six percent. It's a</p> <p>14 subsidized -- subsidized benefit.</p> <p>15 Q But would you have considered that a</p> <p>16 valuable benefit?</p> <p>17 MR. RUMELD: I object to the</p> <p>18 form.</p> <p>19 A I -- I have trouble with the term</p> <p>20 valuable, because that's judgement. What you</p> <p>21 consider valuable and I consider valuable are</p> <p>22 two different things.</p> <p>23 This is a subsidized benefit. It</p> <p>24 provides more to the retiree than if we had made</p> <p>25 the reduction on an actuarial basis.</p>	<p style="text-align: right;">Page 172</p> <p>(14:51:22-14:52:46)</p> <p>1 GREFIG</p> <p>2 benefit at age 55, what would the cost impact of</p> <p>3 that be?</p> <p>4 A Take this benefit at 55?</p> <p>5 Q Yes.</p> <p>6 A Everybody went out?</p> <p>7 Q Well, I said if a large number of</p> <p>8 people terminated, and that's what they elected.</p> <p>9 They waited and they elected that. What would</p> <p>10 the cost impact of that be?</p> <p>11 A I don't know. What -- there are old</p> <p>12 rules of thumb about if you change the normal</p> <p>13 from 65 to 60, and everybody took -- I think you</p> <p>14 double your cost. Maybe you --</p> <p>15 Q It would be expensive?</p> <p>16 A Oh, yeah. Yeah. Yes.</p> <p>17 (Exhibit 83, fax, was marked</p> <p>18 for identification, as of this date.)</p> <p>19 Q 83 is another fax that you sent Mr.</p> <p>20 Kiley, is it not?</p> <p>21 A According to the fax transmittal,</p> <p>22 yes.</p> <p>23 Q Now, with respect to this expensive</p> <p>24 proposition, if an employer was looking to lower</p> <p>25 costs, they might want to avoid that expense of</p>

<p style="text-align: right;">Page 173</p> <p>(14:52:50-14:53:46)</p> <p>1 GREFIG</p> <p>2 paying the early retirement subsidy if they knew</p> <p>3 they were about to have a large number of</p> <p>4 terminations?</p> <p>5 MR. RUMELD: I object to the</p> <p>6 form.</p> <p>7 A I don't know what they knew was going</p> <p>8 to happen.</p> <p>9 Q Now, I'm -- I'm --</p> <p>10 A I can't respond to that question.</p> <p>11 That's a hypothetical question.</p> <p>12 Q If they knew they were about to fire</p> <p>13 a lot of people.</p> <p>14 A If they knew they were about to fire</p> <p>15 a lot of people.</p> <p>16 Q Yes. They might want to avoid that</p> <p>17 expense?</p> <p>18 A They might want to avoid.</p> <p>19 MR. RUMELD: I object to form.</p> <p>20 Q And we were discussing before lunch</p> <p>21 how about half the people left in just a few</p> <p>22 years.</p> <p>23 A Well, no. We never resolved that,</p> <p>24 but -- but rather than trying to reconcile data,</p> <p>25 I'll concede that there was a reduction in</p>	<p style="text-align: right;">Page 175</p> <p>(14:54:50-14:55:50)</p> <p>1 GREFIG</p> <p>2 A Not that I'm aware of.</p> <p>3 Q How about taking a lump sum? Let me</p> <p>4 have that.</p> <p>5 MR. RUMELD: I object to the</p> <p>6 form.</p> <p>7 A I'm sorry.</p> <p>8 Q Was -- withdrawn.</p> <p>9 A That's true even under a conventional</p> <p>10 defined benefit plan, isn't it?</p> <p>11 Q Withdrawn. Was the early retirement</p> <p>12 subsidy paid in lump sum form?</p> <p>13 A I don't recall what was done in the</p> <p>14 Woolworth plan, but I don't think it was</p> <p>15 uncommon to not include subsidies in the -- in a</p> <p>16 lump sum out of any DB plan.</p> <p>17 Q I'm asking -- withdrawn.</p> <p>18 If you assume that the employer did</p> <p>19 not offer the early retirement subsidy in the</p> <p>20 form of a lump sum.</p> <p>21 MR. RUMELD: I object to the</p> <p>22 form.</p> <p>23 A Okay.</p> <p>24 Q You agree to assume.</p> <p>25 A Okay.</p>
<p style="text-align: right;">Page 174</p> <p>(14:53:48-14:54:50)</p> <p>1 GREFIG</p> <p>2 force. Okay.</p> <p>3 Q How about -- how about assume that</p> <p>4 the reduction in force is as I say, and we'll</p> <p>5 let the documents figure themselves out later.</p> <p>6 A As I say, based upon these -- yeah.</p> <p>7 I'll accept that there appeared to be a</p> <p>8 reduction in force.</p> <p>9 Q A reduction in force of about half is</p> <p>10 what I want you to assume for purposes of this</p> <p>11 question.</p> <p>12 A Okay.</p> <p>13 Q So if the employer knew that, they</p> <p>14 might want -- wanted to minimize the cost impact</p> <p>15 of those people leaving.</p> <p>16 A Yes. Your statement -- they may have</p> <p>17 wanted to reduce, but these subsidies were built</p> <p>18 in. Aren't they?</p> <p>19 Q Well, isn't there one way around the</p> <p>20 subsidy?</p> <p>21 MR. RUMELD: I object to form.</p> <p>22 A Aren't the subsidies part of the</p> <p>23 accrued benefit? Aren't they?</p> <p>24 Q Don't you forfeit the subsidy under</p> <p>25 some circumstances?</p>	<p style="text-align: right;">Page 176</p> <p>(14:55:52-14:56:58)</p> <p>1 GREFIG</p> <p>2 Q Well, prior to the conversion the</p> <p>3 participant had no option, could not elect a</p> <p>4 lump sum.</p> <p>5 A Okay.</p> <p>6 Q You agree with that?</p> <p>7 A Unless it was de minimis, correct.</p> <p>8 Correct.</p> <p>9 Q And after the conversion you're not</p> <p>10 aware that the early retirement subsidy was paid</p> <p>11 in lump sum form.</p> <p>12 A I'm not aware, no. No.</p> <p>13 Q So an employer looking to reduce</p> <p>14 costs might want to encourage participants who</p> <p>15 otherwise might qualify for early retirement</p> <p>16 subsidy to elect lump sums?</p> <p>17 A I can't answer that question. I need</p> <p>18 to know what the requirements were in terms of</p> <p>19 an employee coming in to an employer and asking</p> <p>20 for a statement of their accrued benefits and</p> <p>21 their entitlements under the plan, whether</p> <p>22 they're -- they've got to be shown what they can</p> <p>23 take as an early retirement annuity, right?</p> <p>24 So...</p> <p>25 Q What you're talking about is not</p>

<p style="text-align: right;">Page 177</p> <p>(14:57:00-14:57:46)</p> <p>1 GREFIG</p> <p>2 responsive to my question.</p> <p>3 I'm not asking about an individual</p> <p>4 participant coming in and asking about</p> <p>5 elections.</p> <p>6 A But you're looking for almost a yes</p> <p>7 or no answer from me, and I don't understand how</p> <p>8 an employer can encourage an employee to take a</p> <p>9 lump sum.</p> <p>10 Q How about converting to a cash</p> <p>11 balance plan?</p> <p>12 A And encourage to take a lump sum</p> <p>13 rather than the annuity that they're entitled</p> <p>14 to?</p> <p>15 I mean, converting to a -- converting</p> <p>16 to a cash balance plan doesn't wipe away the</p> <p>17 subsidy related to the accrued benefit at the</p> <p>18 time of conversion, does it?</p> <p>19 Q It doesn't wipe away the --</p> <p>20 A The subsidy in the early retirement</p> <p>21 benefit. That still attaches to the accrued</p> <p>22 benefit at the date of conversion.</p> <p>23 Q But if the participant, as you were</p> <p>24 telling me earlier, kept wanting to talk about,</p> <p>25 if they asked for payment, if the participant</p>	<p style="text-align: right;">Page 179</p> <p>(14:58:34-15:00:02)</p> <p>1 GREFIG</p> <p>2 asking other people what their experience was.</p> <p>3 Q So are you saying that you have no</p> <p>4 idea that -- withdrawn.</p> <p>5 A What -- refresh my memory. If an</p> <p>6 employee comes in and asks for a statement of</p> <p>7 their accrued benefit, what are they entitled to</p> <p>8 be shown? What must they be shown?</p> <p>9 Q Do you remember trying to encourage</p> <p>10 Foot Locker to use professional communications</p> <p>11 services in discussing the conversion to a cash</p> <p>12 balance plan with its employees?</p> <p>13 A I don't recall encouraging them, but</p> <p>14 based upon the proposal that you put before me</p> <p>15 before, it's apparent or obvious that I saw an</p> <p>16 opportunity for an assignment for our</p> <p>17 communications practice, and one way or another</p> <p>18 either was asked for a proposal or -- or they</p> <p>19 talked to our communications people and</p> <p>20 requested a proposal, yes.</p> <p>21 Q I'm sorry. Are you -- go ahead. Did</p> <p>22 you finish your answer?</p> <p>23 A I think I did, yes.</p> <p>24 Q But I didn't understand what you were</p> <p>25 saying there at the end.</p>
<p style="text-align: right;">Page 178</p> <p>(14:57:50-14:58:32)</p> <p>1 GREFIG</p> <p>2 asks for payment in the form of a lump sum, that</p> <p>3 early retirement subsidy goes away, doesn't it?</p> <p>4 A Yes.</p> <p>5 Q And that's what happened --</p> <p>6 A Typically. Typically it goes away.</p> <p>7 Q And that's what happened here.</p> <p>8 MR. RUMELD: I object to the</p> <p>9 form.</p> <p>10 A I -- I don't know.</p> <p>11 Q Was one of the reasons for the</p> <p>12 conversion as you understood it at the time to</p> <p>13 encourage participants to take lump sum?</p> <p>14 MR. RUMELD: I object to the</p> <p>15 form.</p> <p>16 A No.</p> <p>17 Q It was to discourage them to take</p> <p>18 lump sum?</p> <p>19 A I don't think there was any</p> <p>20 encouragement or discouragement to take a lump</p> <p>21 sum.</p> <p>22 That -- how to manipulate the</p> <p>23 employee or encourage the employee to do one</p> <p>24 thing or the other, I don't even think it was in</p> <p>25 that survey that you showed me, where I was</p>	<p style="text-align: right;">Page 180</p> <p>(15:00:04-15:00:44)</p> <p>1 GREFIG</p> <p>2 You were shown a proposal for</p> <p>3 administrative services, not for communications?</p> <p>4 A I'm sorry. Did I say administration?</p> <p>5 Q The proposal I showed you earlier --</p> <p>6 A The communication services, right?</p> <p>7 Q No.</p> <p>8 A It wasn't?</p> <p>9 Q But you're remembering one.</p> <p>10 MR. RUMELD: I object to the</p> <p>11 form.</p> <p>12 A No.</p> <p>13 Q You're not?</p> <p>14 A No. Paulette Welsing -- the proposal</p> <p>15 you put before me before? What was that</p> <p>16 proposal for?</p> <p>17 Q I'll come back to it, sir.</p> <p>18 A Okay.</p> <p>19 Q But you believe from looking at it</p> <p>20 that it was for communication services?</p> <p>21 MR. RUMELD: I object to the</p> <p>22 form.</p> <p>23 A From having the opportunity to glance</p> <p>24 at it and not read it, I guess I may have</p> <p>25 inappropriately concluded it was communication</p>

<p style="text-align: right;">Page 181</p> <p>(15:00:48-15:01:34)</p> <p>1 GREFIG</p> <p>2 services.</p> <p>3 Q What you're missing here, sir, is I'm</p> <p>4 just trying to jog your memory any way I can.</p> <p>5 And what I'm asking you is looking at</p> <p>6 that actually jog a memory in your mind,</p> <p>7 whatever it was, whether it was about</p> <p>8 communications or an administrative proposal to</p> <p>9 handle plan administration.</p> <p>10 It did jog a memory in your mind that</p> <p>11 you sent Foot Locker, Woolworth a proposal, and</p> <p>12 encouraged them to hire Mercer to handle</p> <p>13 formally the communications surrounding the</p> <p>14 conversion?</p> <p>15 MR. RUMELD: I object to form.</p> <p>16 A Communications.</p> <p>17 Q Would it jog your memory though.</p> <p>18 That's my question.</p> <p>19 A No. That was a communications</p> <p>20 proposal that you showed me.</p> <p>21 Q Okay. I don't think it is. But --</p> <p>22 A Well, let me give you another piece</p> <p>23 of information then.</p> <p>24 Q Good.</p> <p>25 A Because this is why when I saw the</p>	<p style="text-align: right;">Page 183</p> <p>(15:02:44-15:13:14)</p> <p>1 GREFIG</p> <p>2 correctly-named client manager in it, right?</p> <p>3 A Correct.</p> <p>4 Q So if you put down the document --</p> <p>5 A Yes.</p> <p>6 Q -- and look at me and tell me, didn't</p> <p>7 looking at that, even though it's not a</p> <p>8 communications proposal, jog your memory, your</p> <p>9 mind, that there was such a proposal that was</p> <p>10 sent to Woolworth?</p> <p>11 MR. RUMELD: I object to the</p> <p>12 form.</p> <p>13 A No.</p> <p>14 MR. GOTTESDIENER: He needs to</p> <p>15 switch the tape. We'll switch the</p> <p>16 tape.</p> <p>17 THE VIDEOGRAPHER: This</p> <p>18 concludes Tape Number 3. The time is</p> <p>19 3 p.m. We're off the record.</p> <p>20 (Recess taken)</p> <p>21 THE VIDEOGRAPHER: This begins</p> <p>22 Tape Number 4. The time is 3:10 p.m.</p> <p>23 We're back on the record.</p> <p>24 CONTINUED DIRECT EXAMINATION BY MR.</p> <p>25 GOTTESDIENER:</p>
<p style="text-align: right;">Page 182</p> <p>(15:01:34-15:02:38)</p> <p>1 GREFIG</p> <p>2 proposal I filed it away as communications,</p> <p>3 because Mercer wasn't in the administrative</p> <p>4 services business back at that time.</p> <p>5 Q Was not?</p> <p>6 A Was not. And, in fact, in the</p> <p>7 Stamford office they sold off their group to</p> <p>8 ADP, and they did that before I retired.</p> <p>9 And -- and all of this was taking</p> <p>10 place just before I retired or several years</p> <p>11 before I retired.</p> <p>12 So when I see something from Paulette</p> <p>13 Welsing that you showed me before, maybe I</p> <p>14 should have examined it in closer detail, but I</p> <p>15 filed it away as a communications project.</p> <p>16 Q The document that I showed you was</p> <p>17 Document 68.</p> <p>18 A Okay. Administrative services.</p> <p>19 Q So I'm right about that. That's not</p> <p>20 a proposal about communications, is it?</p> <p>21 A Well, I don't know. Let me look at</p> <p>22 it. She calls it administrative services.</p> <p>23 Q Sir, you didn't look at that long,</p> <p>24 other than the front of it, to see the first two</p> <p>25 pages, and then to see that you were not the</p>	<p style="text-align: right;">Page 184</p> <p>(15:13:14-15:15:34)</p> <p>1 GREFIG</p> <p>2 Q I'm going to show you an exhibit that</p> <p>3 hasn't been shown to you before, but it was</p> <p>4 shown to another witness in another deposition,</p> <p>5 so you've never seen this before.</p> <p>6 It's Exhibit 61. Can you tell me</p> <p>7 what this is, sir?</p> <p>8 A Okay.</p> <p>9 Q Will you be able to tell me without</p> <p>10 reading ever word of the entire document?</p> <p>11 A Yeah. I probably can.</p> <p>12 Q That's my question.</p> <p>13 A It's a letter to the client outlining</p> <p>14 a communications assignment, and outlines the --</p> <p>15 Q Would you turn the letter over and</p> <p>16 give me your recollection of it? Not what you</p> <p>17 read but --</p> <p>18 A I have no recollection of this.</p> <p>19 Q Okay.</p> <p>20 A As I said before I'm --</p> <p>21 Q Isn't this the whole truth --</p> <p>22 A This is a -- this along with many</p> <p>23 other projects that I've had in my life is a</p> <p>24 total blank.</p> <p>25 Q Okay. But you do understand that</p>

<p style="text-align: right;">Page 185</p> <p>(15:15:36-15:16:34)</p> <p>1 GREFIG</p> <p>2 you're under oath here?</p> <p>3 A Yes, I do.</p> <p>4 Q And you're required to try to fill in</p> <p>5 the blank if you think there's anything to be</p> <p>6 filled in, including by having your memory</p> <p>7 refreshed by hearing --</p> <p>8 A I understand what you're trying to --</p> <p>9 Q Let me ask you a question.</p> <p>10 A Yes.</p> <p>11 Q The question is, earlier we discussed</p> <p>12 a communications proposal, and I put it to you</p> <p>13 that the administrative proposal jogged a memory</p> <p>14 in your mind about a communications proposal.</p> <p>15 Isn't this document, 61, the</p> <p>16 communications proposal that you were referring</p> <p>17 to?</p> <p>18 MR. RUMELD: I object to the</p> <p>19 form.</p> <p>20 A No. The communications issue came up</p> <p>21 when your colleague, Steve Cohen, asked me on</p> <p>22 the phone did I ever do or was I involved with</p> <p>23 or do I remember communications assignment for</p> <p>24 Woolworth.</p> <p>25 And that's the first time that that</p>	<p style="text-align: right;">Page 187</p> <p>(15:17:26-15:18:18)</p> <p>1 GREFIG</p> <p>2 business. You always look for opportunities to</p> <p>3 bring more of your colleagues into an</p> <p>4 assignment.</p> <p>5 I mean is it -- isn't it rational to</p> <p>6 develop new business with clients, new clients,</p> <p>7 existing clients, by bringing in other practice</p> <p>8 areas? I don't -- but the -- the seed was</p> <p>9 planted when -- with Steve Cohen's phone call.</p> <p>10 Q Can we just stick to one question,</p> <p>11 one answer?</p> <p>12 You just put to me that it --</p> <p>13 wouldn't it be rational to do that, and my</p> <p>14 question in response to your question is did you</p> <p>15 perceive a need, or was it just give more</p> <p>16 business to Mercer, even if Woolworth didn't</p> <p>17 have the need?</p> <p>18 MR. RUMELD: I object to the</p> <p>19 form.</p> <p>20 A Probably the second.</p> <p>21 Q It was because you thought Woolworth</p> <p>22 needed --</p> <p>23 A Not needed. They could benefit from</p> <p>24 it.</p> <p>25 Q And why?</p>
<p style="text-align: right;">Page 186</p> <p>(15:16:38-15:17:22)</p> <p>1 GREFIG</p> <p>2 phrase communications came up. And I told him</p> <p>3 no, but I may have seen an opportunity for a</p> <p>4 communications practice to get an assignment for</p> <p>5 Woolworth.</p> <p>6 Q Let me ask you about that comment.</p> <p>7 A So that's -- that's where this --</p> <p>8 Q An opportunity from your</p> <p>9 communications --</p> <p>10 A For our communications.</p> <p>11 Q Excuse me. An opportunity for your</p> <p>12 communications group --</p> <p>13 A Practice.</p> <p>14 Q -- practice or group --</p> <p>15 A Right.</p> <p>16 Q -- to get an assignment from</p> <p>17 Woolworth?</p> <p>18 A Correct.</p> <p>19 Q Was part of your compensation tied to</p> <p>20 your bringing in additional business for Mercer?</p> <p>21 A No.</p> <p>22 Q What -- why would you have looked at</p> <p>23 it as an opportunity for a Mercer practice group</p> <p>24 to get more work from Woolworth?</p> <p>25 A It was a rational way to look for</p>	<p style="text-align: right;">Page 188</p> <p>(15:18:18-15:19:10)</p> <p>1 GREFIG</p> <p>2 MR. RUMELD: I object to the</p> <p>3 form.</p> <p>4 A Because they've got -- the only --</p> <p>5 the benefit that any company accrues from having</p> <p>6 a consultant come in and work with them is the</p> <p>7 fact that the consultant has multiple exposures</p> <p>8 to other clients, to other situations, and</p> <p>9 therefore has a collection of experiences, and</p> <p>10 may be helpful to a client when they're</p> <p>11 operating either in the actuarial area or</p> <p>12 communication area, asset strategy area.</p> <p>13 Otherwise these companies may -- and some</p> <p>14 companies used to have their own actuaries on</p> <p>15 staff.</p> <p>16 Q When you said to Mr. Kiley that you</p> <p>17 asked one of your colleagues in our</p> <p>18 communications practice to scope a</p> <p>19 communications strategy --</p> <p>20 A Yes.</p> <p>21 Q -- what did you mean by that?</p> <p>22 MR. RUMELD: I object to form.</p> <p>23 A Give me an outline.</p> <p>24 THE WITNESS: I'm sorry.</p> <p>25 MR. RUMELD: That's okay.</p>

<p style="text-align: right;">Page 189</p> <p>(15:19:12-15:20:12)</p> <p>1 GREFIG</p> <p>2 Q And what does that mean, to -- an</p> <p>3 outline of the strategy that Mercer would</p> <p>4 suggest that Woolworth follow?</p> <p>5 A Not suggest, but outline of how we --</p> <p>6 we or they could work with Woolworth to design a</p> <p>7 communications strategy.</p> <p>8 We don't dictate to the client.</p> <p>9 We -- we work with the client, offer our</p> <p>10 opinions.</p> <p>11 In the case of the study where Mercer</p> <p>12 was involved in the conversion outline, things</p> <p>13 that need to be considered along the way, but --</p> <p>14 but we never walk in and say this is what you</p> <p>15 should do.</p> <p>16 Q The client tells you what they want</p> <p>17 and if --</p> <p>18 A They say we'd like to work with you</p> <p>19 on this assignment, or we give them an outline</p> <p>20 of a proposal of what can be done. But...</p> <p>21 Q So you say as the project moves</p> <p>22 forward --</p> <p>23 A We don't walk in with a package, like</p> <p>24 an insurance company might say here, it's all</p> <p>25 printed up. Just send it out to your employees.</p>	<p style="text-align: right;">Page 191</p> <p>(15:21:00-15:24:10)</p> <p>1 GREFIG</p> <p>2 work with Woolworth.</p> <p>3 Q And Woolworth declined the</p> <p>4 opportunity?</p> <p>5 MR. RUMELD: I object to the</p> <p>6 form.</p> <p>7 A I have to take your statement on its</p> <p>8 face. I guess so. Because I don't -- I don't</p> <p>9 know -- I don't recall what happened.</p> <p>10 Q Well, when you -- were you aware of</p> <p>11 anyone at Woolworth in-house who had the</p> <p>12 communications experience and expertise that</p> <p>13 your communications practice in communicating</p> <p>14 benefit changes to employees?</p> <p>15 A No.</p> <p>16 Q Let me show you Exhibit 6, an</p> <p>17 April 20, 1995 timeline.</p> <p>18 Have you seen a document like this</p> <p>19 before in connection with the Woolworth cash</p> <p>20 balance conversion?</p> <p>21 A No, I have not.</p> <p>22 Q I'll take that back. Thank you.</p> <p>23 Showing you Exhibit 7.</p> <p>24 Can you tell me what Exhibit 7 is?</p> <p>25 Based on a review so far, are you able to tell</p>
<p style="text-align: right;">Page 190</p> <p>(15:20:16-15:20:56)</p> <p>1 GREFIG</p> <p>2 Q The third paragraph you say, "As the</p> <p>3 project moves forward, I would like to review</p> <p>4 the attached and work with you to develop the</p> <p>5 final strategy."</p> <p>6 A Right.</p> <p>7 Q Okay?</p> <p>8 A Right.</p> <p>9 Q And did that occur?</p> <p>10 MR. RUMELD: I object to the</p> <p>11 form.</p> <p>12 A I don't recall.</p> <p>13 Q Actually didn't you tell Mr. Cohen</p> <p>14 that you thought --</p> <p>15 A I don't think so.</p> <p>16 Q That's what you told Mr. Cohen?</p> <p>17 A Right.</p> <p>18 Q You told Mr. Cohen that, in fact --</p> <p>19 that there was such a proposal, but that</p> <p>20 Woolworth never took Mercer up on this?</p> <p>21 A No. I said there may have been a</p> <p>22 proposal, because as I just stated to you,</p> <p>23 there -- I said to Cohen was there may have been</p> <p>24 a proposal, because I may have seen an</p> <p>25 opportunity to have one of our other practices</p>	<p style="text-align: right;">Page 192</p> <p>(15:24:12-15:25:16)</p> <p>1 GREFIG</p> <p>2 me what Exhibit 7 is?</p> <p>3 A It appears to be a summary of other</p> <p>4 highlights. There are some --</p> <p>5 Q A summary of other highlights?</p> <p>6 A Highlights. Looks like this cost</p> <p>7 analysis in here. There's cash balance</p> <p>8 highlights. There's presentation of strategy to</p> <p>9 merge.</p> <p>10 Q I'm not asking you to give an</p> <p>11 interpretation of the current document currently</p> <p>12 in your mind, but rather to tell me, have you</p> <p>13 seen it before?</p> <p>14 Is it the kind of thing that you were</p> <p>15 involved in either creating or using as a tool</p> <p>16 to help Foot Locker, Woolworth make design</p> <p>17 decisions?</p> <p>18 A I don't recall ever seeing this</p> <p>19 document before.</p> <p>20 Q Well, is it the kind of document that</p> <p>21 was generated in connection with their</p> <p>22 consideration of design alternatives?</p> <p>23 A Not by Mercer. This --</p> <p>24 Q You think this is something that</p> <p>25 Woolworth would have created?</p>

<p style="text-align: right;">Page 193</p> <p>(15:25:18-15:26:26)</p> <p>1 GREFIG</p> <p>2 A This -- yes. This doesn't have the</p> <p>3 flavor and the font, the verbiage. It doesn't</p> <p>4 have the flavor of a Mercer document.</p> <p>5 Q How about -- turn to Page 3, if you</p> <p>6 would.</p> <p>7 A Okay. That's it.</p> <p>8 Q You see how it has review of plan</p> <p>9 alternatives?</p> <p>10 A Yes.</p> <p>11 Q And the alternatives in the left-hand</p> <p>12 column are listed, and then in the middle</p> <p>13 there's pros and cons and then estimated costs?</p> <p>14 A Yes.</p> <p>15 Q The alternatives listed are terminate</p> <p>16 the current plan, freeze with the intent to</p> <p>17 terminate, freeze temporarily, change the</p> <p>18 current plan formula to one percent of W-2 comp,</p> <p>19 or finally convert to cash balance plan.</p> <p>20 A Yes.</p> <p>21 Q Looking at the pros and cons, and in</p> <p>22 particular the cons, you see -- let's take the</p> <p>23 first couple.</p> <p>24 Terminate current plan. A con is</p> <p>25 identified here as competitively</p>	<p style="text-align: right;">Page 195</p> <p>(15:27:32-15:28:30)</p> <p>1 GREFIG</p> <p>2 intent to terminate would be competitively</p> <p>3 disadvantageous. I mean, that's a business</p> <p>4 decision.</p> <p>5 Q But I'm not asking -- I'm not asking</p> <p>6 if you wrote this document. I'm asking --</p> <p>7 A Well, I never saw the document</p> <p>8 before, and what I'm trying to also communicate</p> <p>9 to you is that this reason that I -- probably</p> <p>10 never saw it before. Because --</p> <p>11 Q I'm not asking about seeing it right</p> <p>12 now. I'm asking, does it help refresh your</p> <p>13 recollection. I'll take it back, because you're</p> <p>14 saying no before I ask my question.</p> <p>15 Does it help refresh your</p> <p>16 recollection that considerations like</p> <p>17 competitively disadvantageous, like negative</p> <p>18 publicity, were considerations that you learned</p> <p>19 during the design process that Foot Locker took</p> <p>20 into account in making a decision?</p> <p>21 A This does not refresh my memory. I</p> <p>22 have no recollection of conversations that I had</p> <p>23 with the people during the scope of this</p> <p>24 project.</p> <p>25 Q When you --</p>
<p style="text-align: right;">Page 194</p> <p>(15:26:30-15:27:30)</p> <p>1 GREFIG</p> <p>2 disadvantageous, and another con, negative</p> <p>3 publicity. Do you see that?</p> <p>4 A Yes, I do.</p> <p>5 Q And that also is repeated for</p> <p>6 freezing with the intent to terminate, the next</p> <p>7 option?</p> <p>8 A Okay.</p> <p>9 Q Does looking at this and seeing this</p> <p>10 refresh your recollection that options other</p> <p>11 than just convert to cash balance were</p> <p>12 considered but turned down because their cons</p> <p>13 far outweighed any pros?</p> <p>14 A Well, the fact that other</p> <p>15 considerations were looked at was in one of the</p> <p>16 other documents that you gave me before.</p> <p>17 Q Which is not my question. My</p> <p>18 question is looking at this document it helps</p> <p>19 refresh --</p> <p>20 A No, it does not, because I haven't</p> <p>21 seen this document before.</p> <p>22 Q But --</p> <p>23 A And some verbiage in here is not</p> <p>24 actuarial verbiage. This -- I would not be in a</p> <p>25 position to say that any -- that freezing with</p>	<p style="text-align: right;">Page 196</p> <p>(15:28:30-15:29:34)</p> <p>1 GREFIG</p> <p>2 A Conversations. I mean, 17 years ago.</p> <p>3 I have no recollection of conversations.</p> <p>4 Q I currently didn't have on the table</p> <p>5 a question about conversations.</p> <p>6 When you spent time in writing and</p> <p>7 orally communicating with Tom Kiley and Carol</p> <p>8 Kanowicz and anyone else at Foot Locker about</p> <p>9 the various options and impacts of design</p> <p>10 considerations that were on the table, were you</p> <p>11 being truthful when you did so?</p> <p>12 A With them?</p> <p>13 Q Yes.</p> <p>14 A Yes.</p> <p>15 Q Were you being truthful with everyone</p> <p>16 you communicated with on that topic?</p> <p>17 A I would always be truthful with the</p> <p>18 people I'm communicating with.</p> <p>19 Q Were you careful in your</p> <p>20 communications with them as to the impacts of</p> <p>21 the various alternatives that you were</p> <p>22 presenting to them?</p> <p>23 A Yes.</p> <p>24 Q Were you -- did you take care when</p> <p>25 you were in meetings to ensure to the best of</p>

<p style="text-align: right;">Page 197</p> <p>(15:29:36-15:30:48)</p> <p>1 GREFIG</p> <p>2 your ability, without the ability to get inside</p> <p>3 of someone's head, that they understood what you</p> <p>4 were communicating to them?</p> <p>5 A Yes. That is a matter of style. I</p> <p>6 would never leave the room without feeling</p> <p>7 comfortable, that the client understood what was</p> <p>8 being said and what the implications are.</p> <p>9 And I think if you look back at some</p> <p>10 of these documents that have pros and cons and</p> <p>11 considerations, all bases were touched to the</p> <p>12 best of our ability.</p> <p>13 Q And to the best of your ability, in</p> <p>14 these meetings, presentations, written</p> <p>15 submissions, you tried to communicate in as</p> <p>16 clear a way as you could what are some fairly</p> <p>17 complicated actuarial concepts?</p> <p>18 MR. RUMELD: I object to the</p> <p>19 form.</p> <p>20 A Yes. It -- again --</p> <p>21 Q I'll ask the question again.</p> <p>22 A Yes.</p> <p>23 Q Remember the discussion we were</p> <p>24 having before about six percent and nine</p> <p>25 percent?</p>	<p style="text-align: right;">Page 199</p> <p>(15:31:42-15:32:44)</p> <p>1 GREFIG</p> <p>2 MR. RUMELD: I object to the</p> <p>3 form.</p> <p>4 A Working with Tom was -- was an</p> <p>5 easy -- easy -- he's easy to work with. I don't</p> <p>6 have any recollection whatsoever of having to</p> <p>7 struggle during the course of a conversation.</p> <p>8 Q With Kiley?</p> <p>9 A With Kiley.</p> <p>10 Q But you did have meetings on occasion</p> <p>11 with other people, with or without Kiley</p> <p>12 present, where some things did appear a struggle</p> <p>13 for them to understand without further</p> <p>14 explanations from you?</p> <p>15 MR. RUMELD: Objection to the</p> <p>16 form. Go ahead.</p> <p>17 A I have no recollection of that, and</p> <p>18 maybe that's a good example of why I'm having</p> <p>19 such difficulty with recalling all of this</p> <p>20 material.</p> <p>21 The thing that stands out in my mind,</p> <p>22 looking back over my career, of a unique</p> <p>23 situation, the things that were tough, the</p> <p>24 things where -- the ongoing problems, things</p> <p>25 didn't get resolved in time, there wasn't any</p>
<p style="text-align: right;">Page 198</p> <p>(15:30:48-15:31:40)</p> <p>1 GREFIG</p> <p>2 A Uh-huh.</p> <p>3 Q And wear-away?</p> <p>4 A Uh-huh.</p> <p>5 Q You have to say yes or no for him.</p> <p>6 A Yes.</p> <p>7 Q Do you think these are easy concepts</p> <p>8 for non-actuaries to understand?</p> <p>9 A Non-actuaries. Non-actuaries, no.</p> <p>10 They're not easy to understand. If we're</p> <p>11 talking about Tom Kiley, who you said to me</p> <p>12 before had some prior actuarial experience --</p> <p>13 Q Well, what I say isn't evidence. You</p> <p>14 say he was good with numbers.</p> <p>15 A Yes.</p> <p>16 Q You said that, right?</p> <p>17 A Yes.</p> <p>18 Q You agree with that?</p> <p>19 A Yes.</p> <p>20 Q So if you could continue. What about</p> <p>21 Tom Kiley. Non-actuaries --</p> <p>22 A Non-actuaries, some of these concepts</p> <p>23 are difficult for them to grasp and retain.</p> <p>24 Q But with Tom Kiley, you don't think</p> <p>25 he had that problem?</p>	<p style="text-align: right;">Page 200</p> <p>(15:32:48-15:33:36)</p> <p>1 GREFIG</p> <p>2 response, and those issues stand out in my mind.</p> <p>3 I fired two clients during my career. That</p> <p>4 sticks out in my mind.</p> <p>5 Q Who did you fire?</p> <p>6 A I fired a company up in Connecticut,</p> <p>7 and I fired one down here in Manhattan.</p> <p>8 Q Because?</p> <p>9 A One was a pain in the butt and was</p> <p>10 always coming in at the end of -- end of -- you</p> <p>11 know, we got a change in the law and everybody</p> <p>12 else is on track, and this guy comes walking in</p> <p>13 at the last minute, wants to know what everybody</p> <p>14 else did, so he could do it without having to</p> <p>15 incur a fee.</p> <p>16 And I had another client who wanted</p> <p>17 special treatment the way his fees were put</p> <p>18 together, so I did it the way he wanted and</p> <p>19 charged him an extra hundred bucks for doing so.</p> <p>20 Q And then fired him?</p> <p>21 A Well, I didn't have to show him the</p> <p>22 door.</p> <p>23 Q So --</p> <p>24 A He didn't want any more of me.</p> <p>25 Q But it does --</p>

<p style="text-align: right;">Page 201</p> <p>(15:33:36-15:34:44)</p> <p>1 GREFIG</p> <p>2 A That stands out in my mind. Why?</p> <p>3 Because it's unusual. It's out of the ordinary.</p> <p>4 Q You worked with other in-house</p> <p>5 administrators, whether the title is literally</p> <p>6 that or not, for other companies other than</p> <p>7 Woolworth?</p> <p>8 A Yes. Yes.</p> <p>9 Q You had integrated with other plans?</p> <p>10 A With people who have similar</p> <p>11 positions to Tom Kiley, yes.</p> <p>12 Q Did those people all have the math</p> <p>13 skills and understanding that Kiley did?</p> <p>14 A No. No.</p> <p>15 Q So Kiley -- Kiley was a pleasure</p> <p>16 comparatively to work with insofar as he didn't</p> <p>17 have a struggle with these concepts?</p> <p>18 A I didn't have any difficulty working</p> <p>19 with Kiley, and I'm not sure I want to put a</p> <p>20 title pleasure on it, because it connotes other</p> <p>21 things.</p> <p>22 But you as a professional, clients,</p> <p>23 where someone came in to you and said, you know,</p> <p>24 it's -- thus and so happened, you say why am I</p> <p>25 not surprised.</p>	<p style="text-align: right;">Page 203</p> <p>(15:36:24-15:37:30)</p> <p>1 GREFIG</p> <p>2 A I'll give you an example of where a</p> <p>3 meeting did come to mind and dates back longer</p> <p>4 than this, was with Bill Forcht.</p> <p>5 Q Okay.</p> <p>6 A And at that point in time -- he was</p> <p>7 Pat Peck's predecessor. At that point in time</p> <p>8 the Woolworth retirement plan owned the</p> <p>9 Woolworth building.</p> <p>10 So question came up that was put to</p> <p>11 me by Bill, what do we have to do if we want to</p> <p>12 sell this.</p> <p>13 And I said, well, first thing it has</p> <p>14 to be an arm's length transaction. And for some</p> <p>15 reason he found that response irritated him and</p> <p>16 he just -- he snapped.</p> <p>17 Again, that's something that stands</p> <p>18 out in my mind. I remember sitting in his</p> <p>19 office.</p> <p>20 He was in a chair here (indicating).</p> <p>21 The attorney was over there (indicating). I was</p> <p>22 here. And it was an honest, straightforward</p> <p>23 answer. I said it's got to be an arm's length</p> <p>24 transaction. For some reason that -- that</p> <p>25 sticks into my mind.</p>
<p style="text-align: right;">Page 202</p> <p>(15:34:46-15:36:24)</p> <p>1 GREFIG</p> <p>2 And then you got other clients where</p> <p>3 if somebody came and said the same thing, you</p> <p>4 would say it's a problem here. Okay.</p> <p>5 We never had those types of issues</p> <p>6 here. Tom was -- was easy to work with. He was</p> <p>7 understanding. He was responsive. He --</p> <p>8 Q There were no miscommunications in</p> <p>9 the ordinary course?</p> <p>10 MR. RUMELD: I object to the</p> <p>11 form.</p> <p>12 A In the ordinary course of business.</p> <p>13 No miscommunications. No.</p> <p>14 Q And -- but without asking you,</p> <p>15 because I think this may have been a stumbling</p> <p>16 block that I would like to get over, to try to</p> <p>17 recall specific conversations, don't you have a</p> <p>18 general recollection of being in meetings or on</p> <p>19 conference calls with groups of people from Foot</p> <p>20 Locker about the conversion, where it was not</p> <p>21 just you and Kiley?</p> <p>22 A No. The -- the only meeting that</p> <p>23 comes to mind at Woolworth has nothing to do --</p> <p>24 had nothing to do with cash balance plan.</p> <p>25 Q Okay.</p>	<p style="text-align: right;">Page 204</p> <p>(15:37:30-15:38:28)</p> <p>1 GREFIG</p> <p>2 Q Who was the attorney?</p> <p>3 A It was in-house counsel at that time.</p> <p>4 Q Who?</p> <p>5 A It was a woman. Forget what her name</p> <p>6 was.</p> <p>7 Q And about what year would this have</p> <p>8 been?</p> <p>9 A Probably late -- late '80s. Late</p> <p>10 1980s.</p> <p>11 Q He snapped because he didn't want to</p> <p>12 be told that it had to be arm's length?</p> <p>13 A Yes, or something related to that,</p> <p>14 yes. I just made his life a little more</p> <p>15 complicated I guess.</p> <p>16 Q And did the transaction go through?</p> <p>17 A Not then. I don't know what happened</p> <p>18 after. I don't know. I don't think it went --</p> <p>19 anything happened until after I retired.</p> <p>20 Because I don't -- you know, you</p> <p>21 referenced Foot Locker, which is what it is</p> <p>22 today.</p> <p>23 To me it was always Woolworth, and</p> <p>24 then it became something else that no one</p> <p>25 remembers, at least I don't remember. And then</p>

<p style="text-align: right;">Page 205</p> <p>(15:38:28-15:40:30)</p> <p>1 GREFIG</p> <p>2 I guess -- I don't know when it became Foot</p> <p>3 Locker.</p> <p>4 Q Pension equity plan? Does that ring</p> <p>5 any bells with you? Handing you Exhibit 84.</p> <p>6 (Exhibit 84, fax, was marked</p> <p>7 for identification, as of this date.)</p> <p>8 A Pension equity. Yes. It sounds...</p> <p>9 Q Does looking at 84 and hearing</p> <p>10 pension equity plan ring any bells about pension</p> <p>11 equity plan with you?</p> <p>12 A Pension equity plan rings a bell.</p> <p>13 Q That's about it?</p> <p>14 A That's about it.</p> <p>15 Q You do agree that this appears to be</p> <p>16 a fax from Carol Kanowicz to you?</p> <p>17 A Yes.</p> <p>18 Q But beyond that there's nothing you</p> <p>19 can tell us?</p> <p>20 A Didn't Woolworth have pension equity</p> <p>21 plan? There's stuff from Kwasha Lipton. Is</p> <p>22 this -- it's another actuarial firm.</p> <p>23 Q Was Quasha in any way at any point in</p> <p>24 time as far as you were aware a potential</p> <p>25 competitor to Mercer in offering actuarial</p>	<p style="text-align: right;">Page 207</p> <p>(15:41:38-15:42:56)</p> <p>1 GREFIG</p> <p>2 Q What do you mean when you say it's a</p> <p>3 significant document?</p> <p>4 A Substantial weight, pages.</p> <p>5 Q It has a number of pages to it.</p> <p>6 A Yes.</p> <p>7 Q Okay. Do you know what a scrivener's</p> <p>8 error is?</p> <p>9 A Yes, I do.</p> <p>10 Q What is a scrivener's error?</p> <p>11 A It's when the plan drafter quotes the</p> <p>12 wrong word or phrase to a plan document, and it</p> <p>13 comes up with unintended results.</p> <p>14 Q Did a scrivener's error make its way</p> <p>15 into the Woolworth retirement plan, as far as</p> <p>16 you know?</p> <p>17 A Not as far as I know, no.</p> <p>18 Q There was a feature of the new plan</p> <p>19 that limited participants once they terminated</p> <p>20 who were under age 55 to six months if they</p> <p>21 wanted to receive their benefit, or if they</p> <p>22 didn't act within that window they would have to</p> <p>23 wait until age 55. Does that ring a bell with</p> <p>24 you?</p> <p>25 A It -- I don't know whether it rings a</p>
<p style="text-align: right;">Page 206</p> <p>(15:40:34-15:41:36)</p> <p>1 GREFIG</p> <p>2 consulting services or actuarial services?</p> <p>3 A All the firms were. I mean</p> <p>4 Woolworth --</p> <p>5 Q I don't mean in theory. I mean in</p> <p>6 practice.</p> <p>7 A You mean were they a threat to me?</p> <p>8 Q Whether you ever learned that there</p> <p>9 was a competing proposal or competing study or</p> <p>10 conversations being done while you were working</p> <p>11 on the plan.</p> <p>12 A No. I was not aware of it, but one</p> <p>13 of the thoughts I had before when we started</p> <p>14 this conversation about cash balance plan, you</p> <p>15 know, that time all of the -- I don't know what</p> <p>16 they do now, but all of the firms were</p> <p>17 constantly sending out brochures on current</p> <p>18 subject matters.</p> <p>19 So Tom Kiley and the crew down there</p> <p>20 had input other than from Mercer. But I'm not</p> <p>21 aware that they had meetings or anything else</p> <p>22 like this.</p> <p>23 This is a significant document. But</p> <p>24 did they not have a pension equity plan or was</p> <p>25 this for a new proposal?</p>	<p style="text-align: right;">Page 208</p> <p>(15:43:00-15:43:54)</p> <p>1 GREFIG</p> <p>2 bell with me. It was in that -- that e-mail</p> <p>3 that you showed me, where there was a summary.</p> <p>4 Wasn't there something in there,</p> <p>5 stipulation about a plan provision that made</p> <p>6 terminated vested employees wait? So yes, it</p> <p>7 rings a bell, but I think it's in relation to</p> <p>8 that --</p> <p>9 Q The survey that you took of other</p> <p>10 people?</p> <p>11 A Yes.</p> <p>12 Q I'm asking about the actual Woolworth</p> <p>13 plan.</p> <p>14 A No. No.</p> <p>15 Q So you wouldn't be able to tell us</p> <p>16 why that may be in the plan?</p> <p>17 A Did I share that e-mail with Tom?</p> <p>18 Q I'm mostly not supposed to be telling</p> <p>19 you things, just asking you questions. I just</p> <p>20 want to know --</p> <p>21 A Well, I may --</p> <p>22 Q -- if I shared it with Tom --</p> <p>23 A Then maybe --</p> <p>24 Q If you shared it with Tom --</p> <p>25 A -- that's the idea.</p>

<p style="text-align: right;">Page 209</p> <p>(15:43:54-15:46:56)</p> <p>1 GREFIG</p> <p>2 Q Other than your speculation, trying</p> <p>3 to help us out here with speculation about maybe</p> <p>4 that's where it came from, do you have anything</p> <p>5 to provide us, other than that connection?</p> <p>6 A No. As to the question being how did</p> <p>7 that provision get into the Woolworth retirement</p> <p>8 plan or why is it there?</p> <p>9 No. I have to ask myself what</p> <p>10 purpose would it serve, and that -- again, no</p> <p>11 recollection of a conversation about that.</p> <p>12 Q Please tell me what Exhibit 85 is.</p> <p>13 (Exhibit 85, cost estimates,</p> <p>14 was marked for identification, as of</p> <p>15 this date.)</p> <p>16 A These are cost estimates, cash</p> <p>17 flow -- not cash flow. Benefit projection.</p> <p>18 Q You saw the chart on Page 829?</p> <p>19 A Yes.</p> <p>20 Q What does that illustrate?</p> <p>21 A Looks like it's plotting the benefits</p> <p>22 that are shown on the first page.</p> <p>23 Q And --</p> <p>24 A Let me see. Let me make sure that</p> <p>25 that -- yeah. Cash balance plan peaks and then</p>	<p style="text-align: right;">Page 211</p> <p>(15:48:46-15:50:34)</p> <p>1 GREFIG</p> <p>2 Q Before the lunch break?</p> <p>3 A Yes. If they put in a true actuarial</p> <p>4 equivalent reduction, there would be about a \$2</p> <p>5 million savings in certain normal cost. I was</p> <p>6 about to call it service cost, but it's normal</p> <p>7 cost.</p> <p>8 Q Just so there's no ambiguity for Ron</p> <p>9 here, you were saying that the savings would be</p> <p>10 about \$2 million in normal cost?</p> <p>11 A Normal cost. Right. Yes.</p> <p>12 Q And -- but the chart on 829 is based</p> <p>13 on most people electing a lump sum?</p> <p>14 A It doesn't say that. But...</p> <p>15 Q Is that what it says?</p> <p>16 A That's what it appears to be. Right.</p> <p>17 Q So it's showing that -- and all of</p> <p>18 the people that were taking the lump sums are</p> <p>19 not getting the early retirement subsidy?</p> <p>20 A Presumably.</p> <p>21 Q And the projection illustrates the</p> <p>22 magnitude of the long-term savings that the</p> <p>23 company would enjoy by people not receiving the</p> <p>24 early retirement subsidy?</p> <p>25 MR. RUMELD: I object to the</p>
<p style="text-align: right;">Page 210</p> <p>(15:47:00-15:48:44)</p> <p>1 GREFIG</p> <p>2 drops off. Right. Because it's a closed</p> <p>3 population.</p> <p>4 Q What do you mean by that?</p> <p>5 A Well, it means that the projection</p> <p>6 was done based upon current active participants,</p> <p>7 as opposed to a population projection, where you</p> <p>8 would replace terminations of new -- new</p> <p>9 employees, I mean, when you do a full benefit --</p> <p>10 benefit disbursement projection.</p> <p>11 What's the date on this? And then it</p> <p>12 looks like cost alternative for the PEP plan.</p> <p>13 I'm assuming this is a cost estimate that was</p> <p>14 prepared by Mercer based upon the Kwasha Lipton</p> <p>15 plan.</p> <p>16 Q You're looking at Page 830, right?</p> <p>17 A 830. Right.</p> <p>18 Q And on 831?</p> <p>19 A Savings. Oh. Oh. Oh. Okay. It</p> <p>20 appears that based on the early retirement</p> <p>21 assumptions that were used for the Woolworth</p> <p>22 retirement plan, if in lieu of the subsidized</p> <p>23 early retirement factors that are shown in the</p> <p>24 valuation report, the document we were looking</p> <p>25 at before.</p>	<p style="text-align: right;">Page 212</p> <p>(15:50:34-15:51:28)</p> <p>1 GREFIG</p> <p>2 form.</p> <p>3 A This thing?</p> <p>4 Q Yes.</p> <p>5 A This chart?</p> <p>6 Q Yes.</p> <p>7 A No, no. When -- people under the</p> <p>8 current plan benefits projection, what you have</p> <p>9 are retirees and future retirees who retire and</p> <p>10 commence an annuity payment that may run for 15,</p> <p>11 20 or 40 years. So you get this cumulative</p> <p>12 effect. Okay.</p> <p>13 Q You just ran your finger over the --</p> <p>14 I'm sorry.</p> <p>15 A Over which one?</p> <p>16 Q You ran your finger on --</p> <p>17 A The cash balance plan benefits.</p> <p>18 Q Yes. 829. You ran your finger on</p> <p>19 the sloping wave on the graph, right?</p> <p>20 A Right.</p> <p>21 Q Those are lump sums?</p> <p>22 A Right. So it's the other one. It's</p> <p>23 the other one that has the cumulative effect.</p> <p>24 Q So it's the area under the curve that</p> <p>25 represents the payments from the plan?</p>

<p style="text-align: right;">Page 213</p> <p>(15:51:32-15:54:14)</p> <p>1 GREFIG</p> <p>2 A Yes.</p> <p>3 Q And it's \$2 million in savings for</p> <p>4 years?</p> <p>5 A On 830? Whoops. No. Where am I?</p> <p>6 Where was I? Oh. It was folded under. Yes.</p> <p>7 The last page on 831. To the extent that</p> <p>8 affects normal cost, I would expect that to be</p> <p>9 ongoing.</p> <p>10 (Exhibit 86, fax dated 5/16/95,</p> <p>11 was marked for identification, as of</p> <p>12 this date.)</p> <p>13 Q Showing you 86 from May 16, 1995.</p> <p>14 This is your handwriting?</p> <p>15 A Yes.</p> <p>16 Q On all of these pages, right?</p> <p>17 A Well, I'm still stuck on the</p> <p>18 transmittal sheet. Is there a date on this?</p> <p>19 Q Yes. There's a date on the first</p> <p>20 page at the fax header, and then on the second</p> <p>21 page is a handwritten date by yourself of</p> <p>22 May 16, 1995; is that correct?</p> <p>23 A Yes. Right.</p> <p>24 Q So what is that showing?</p> <p>25 A I'm thinking about how badly drafted</p>	<p style="text-align: right;">Page 215</p> <p>(15:55:28-15:57:06)</p> <p>1 GREFIG</p> <p>2 A Appears to be my handwriting, yes.</p> <p>3 Q And at the bottom right, "Woolworth</p> <p>4 distribution," these initials and the words</p> <p>5 "Woolworth distribution", you didn't write that?</p> <p>6 A No. And the note to Tom is not my</p> <p>7 writing either.</p> <p>8 Q That -- it says Jim under it.</p> <p>9 A That's Cassidy. Yes.</p> <p>10 Q It says, "Tom, please call me to</p> <p>11 discuss," right?</p> <p>12 A Yes. It does. That's not my phone</p> <p>13 number.</p> <p>14 Q If -- if Mercer did this work to</p> <p>15 analyze these savings, it would have been</p> <p>16 something that you would have made sure that</p> <p>17 Mercer communicated to the client?</p> <p>18 A Yes. Supposed to.</p> <p>19 (Exhibit 87, fax, was marked</p> <p>20 for identification, as of this date.)</p> <p>21 Q 87 is a fax from you to Mary Sue</p> <p>22 Dickinson. Does that name ring a bell?</p> <p>23 A Yes.</p> <p>24 Q Who is she?</p> <p>25 A She was in the asset planning group.</p>
<p style="text-align: right;">Page 214</p> <p>(15:54:20-15:55:24)</p> <p>1 GREFIG</p> <p>2 it is.</p> <p>3 Q Why is that? What are you referring</p> <p>4 to?</p> <p>5 A Well, it looks like a comparison of</p> <p>6 cash balance credit and account growth to the</p> <p>7 pension equity plan credit and account.</p> <p>8 But I don't understand why the</p> <p>9 handwritten note says discounted at eight and a</p> <p>10 quarter percent, because I don't know where it's</p> <p>11 being discounted from.</p> <p>12 Q Would you look back at 85 for a</p> <p>13 moment? The prior exhibit? That showed the</p> <p>14 savings from the elimination of the early</p> <p>15 retirement subsidy?</p> <p>16 A Yes.</p> <p>17 Q Who are you referring to Woolworth</p> <p>18 distribution? Right-hand corner, in your</p> <p>19 handwriting.</p> <p>20 A This isn't --</p> <p>21 Q That's not your handwriting?</p> <p>22 A No. This (indicating) is my</p> <p>23 handwriting.</p> <p>24 Q So the handwriting that says "Cash</p> <p>25 balance and general" is yours?</p>	<p style="text-align: right;">Page 216</p> <p>(15:57:10-15:58:48)</p> <p>1 GREFIG</p> <p>2 Q This reads, "May 26, 1995. Mary Sue,</p> <p>3 attached is a benefit disbursement projection</p> <p>4 for the January 1, 1995 active participants</p> <p>5 under the Woolworth retirement plan, TWRP, and a</p> <p>6 proposed cash balance formula.</p> <p>7 "While the incremental cash</p> <p>8 disbursement is significant during the first few</p> <p>9 years, the plan is now out of full funding, and</p> <p>10 new money coming into the plan will cover a</p> <p>11 substantial portion of additional payments."</p> <p>12 You see that there, right?</p> <p>13 A Yes, yes.</p> <p>14 Q You don't doubt that you wrote that</p> <p>15 and sent that to Mary Sue?</p> <p>16 A It sounds like something I would have</p> <p>17 composed, yes.</p> <p>18 Q And the incremental cash disbursement</p> <p>19 that you call significant during the first few</p> <p>20 years, that's a reference to your knowledge that</p> <p>21 under the formula that would be adopted cash</p> <p>22 balance there would be a lot of lump sums?</p> <p>23 A Yes.</p> <p>24 (Exhibit 88, handwritten notes</p> <p>25 dated 6/12/95, was marked for</p>

<p style="text-align: right;">Page 217</p> <p>(15:58:48-16:00:44)</p> <p>1 GREFIG</p> <p>2 identification, as of this date.)</p> <p>3 Q 88 is your June 12, 1995 handwritten</p> <p>4 notes; isn't that correct?</p> <p>5 A That's my handwriting.</p> <p>6 Q And this reflects your call with Mr.</p> <p>7 Kiley, and that you were going to be showing him</p> <p>8 options involving formulas for the new plan that</p> <p>9 had tiers; is that correct?</p> <p>10 A Yes. That looks like he's requesting</p> <p>11 certain illustrations be prepared.</p> <p>12 Q That's consistent with what you</p> <p>13 recall about Mr. Kiley, that he liked to know</p> <p>14 all the options?</p> <p>15 MR. RUMELD: I object to the</p> <p>16 form.</p> <p>17 A Uh-huh.</p> <p>18 Q You have to say yes or no.</p> <p>19 A Yes. I'm sorry.</p> <p>20 Q Showing you 89.</p> <p>21 A The three-tier, the eight-tier thing</p> <p>22 just doesn't -- I mean, just looking at it I'm</p> <p>23 aghast. Eight tiers to the benefit formula?</p> <p>24 Q Aghast because that would be very</p> <p>25 complicated?</p>	<p style="text-align: right;">Page 219</p> <p>(16:01:56-16:03:06)</p> <p>1 GREFIG</p> <p>2 A I have a recollection of a comparison</p> <p>3 having been made to other -- other retailers.</p> <p>4 Q Why was that done?</p> <p>5 A I don't know.</p> <p>6 Q Why would it have been done?</p> <p>7 A Why would it have been done? Because</p> <p>8 they see themselves in the retailing business,</p> <p>9 and if nothing else but curiosity would want to</p> <p>10 know what the competition is offering.</p> <p>11 Q But in -- apart from abstract</p> <p>12 curiosity, why would -- why would Woolworth be</p> <p>13 interested to know what their competitors are</p> <p>14 doing --</p> <p>15 MR. RUMELD: I object to the</p> <p>16 form.</p> <p>17 Q -- in terms of the benefits offered</p> <p>18 to employees?</p> <p>19 A Well, if they perceived those other</p> <p>20 retailers to be competing for their employees,</p> <p>21 then they would have an interest in it.</p> <p>22 But from my recollection of</p> <p>23 Woolworth, I as the outsider would not have</p> <p>24 deemed Sears to be a competitor of their own</p> <p>25 employees.</p>
<p style="text-align: right;">Page 218</p> <p>(16:00:44-16:01:54)</p> <p>1 GREFIG</p> <p>2 A Yes. If I understand it to be -- if</p> <p>3 I understand it correctly.</p> <p>4 (Exhibit 89, document, was</p> <p>5 marked for identification, as of this</p> <p>6 date.)</p> <p>7 Q You do know that that's the formula</p> <p>8 that Foot Locker, Woolworth adopted?</p> <p>9 A No. I don't. I don't remember what</p> <p>10 they adopted. Are those tiers prospective based</p> <p>11 on service or age or are they --</p> <p>12 Q With all due respect, if you could</p> <p>13 look at 89, please?</p> <p>14 A Yes.</p> <p>15 Q 89 is a Mercer document that was</p> <p>16 produced from Mercer files, that at the top says</p> <p>17 Woolworth Corporation retirement plan</p> <p>18 comparison. You see that?</p> <p>19 A Yes.</p> <p>20 Q Does this refresh your recollection a</p> <p>21 bit that there were comparisons that were done</p> <p>22 between proposed cash balance formulas and the</p> <p>23 plans of other retailers?</p> <p>24 MR. RUMELD: I object to the</p> <p>25 form.</p>	<p style="text-align: right;">Page 220</p> <p>(16:03:08-16:04:16)</p> <p>1 GREFIG</p> <p>2 Q How about some of the others listed?</p> <p>3 A I don't know if Federated --</p> <p>4 Federated is owner of Macy's? I don't know. I</p> <p>5 never walked past a Federated store.</p> <p>6 Q But your recollection is that this is</p> <p>7 one of the factors that you understood from Mr.</p> <p>8 Kiley and Woolworth to be in the mix of what</p> <p>9 design was ultimately adopted, was how it would</p> <p>10 position Woolworth in terms of other retailers</p> <p>11 for competing in the marketplace for employees?</p> <p>12 MR. RUMELD: I object to the</p> <p>13 form.</p> <p>14 A I would use the word consideration as</p> <p>15 opposed to factor.</p> <p>16 Q Okay.</p> <p>17 A In other words --</p> <p>18 Q Is there a difference?</p> <p>19 A Yes. I think a factor -- a factor</p> <p>20 has more compulsion to it than a consideration.</p> <p>21 One is awareness, and the other is I got to -- I</p> <p>22 got to beat this guy or it's -- it's a factor</p> <p>23 that has to be built into everything that's</p> <p>24 done, whereas consideration is I wonder what the</p> <p>25 other guys are doing.</p>

<p style="text-align: right;">Page 221</p> <p>(16:04:18-16:05:52)</p> <p>1 GREFIG</p> <p>2 Q What is a replacement ratio?</p> <p>3 A It's the proportion of the final pay</p> <p>4 or the final five average pay. That would be</p> <p>5 one of the selections, your base.</p> <p>6 The question is what is a replacement</p> <p>7 ratio. A replacement ratio is the ratio of the</p> <p>8 plan benefit to the final pay of the employee at</p> <p>9 time of retirement, or the final average pay</p> <p>10 depending upon the nature of the discussion at</p> <p>11 hand.</p> <p>12 Q And did you do any replacement ratio</p> <p>13 analyses for Woolworth in connection with the</p> <p>14 conversion?</p> <p>15 A I don't remember. We may have, but I</p> <p>16 don't remember.</p> <p>17 (Exhibit 90, document, was</p> <p>18 marked for identification, as of this</p> <p>19 date.)</p> <p>20 Q Exhibit 90.</p> <p>21 MS. WALWORTH: After this</p> <p>22 document let's take a comfort break,</p> <p>23 if you don't mind.</p> <p>24 Q You see at the bottom right-hand</p> <p>25 corner it says Mercer FL?</p>	<p style="text-align: right;">Page 223</p> <p>(16:07:08-16:08:16)</p> <p>1 GREFIG</p> <p>2 with respect to the document in hand, but the</p> <p>3 actuarial assumptions for termination and</p> <p>4 retirement for the Woolworth retirement plan</p> <p>5 valuations were the result of an experience</p> <p>6 analysis.</p> <p>7 Q When did they do that study?</p> <p>8 A I don't recall. Probably the late</p> <p>9 '80s.</p> <p>10 Q And that was a study that Woolworth</p> <p>11 did in house?</p> <p>12 A No, no. The actuaries -- the</p> <p>13 actuaries did it. They wouldn't have the</p> <p>14 capacity -- I mean, they had -- they had the</p> <p>15 ability under direction to do it, but we had</p> <p>16 systems that can consolidate five or more years</p> <p>17 or whatever number of years of termination in</p> <p>18 retirement experience that we had to develop an</p> <p>19 experience analysis.</p> <p>20 You need -- you need a number of</p> <p>21 years of experience to develop these studies.</p> <p>22 You can't rely on just one year of input. So...</p> <p>23 Q How often should such a study be</p> <p>24 done?</p> <p>25 A If -- if you're running actuarial</p>
<p style="text-align: right;">Page 222</p> <p>(16:05:54-16:07:00)</p> <p>1 GREFIG</p> <p>2 A Yes.</p> <p>3 Q That means it was produced from</p> <p>4 Mercer's files, as opposed to from Foot Locker's</p> <p>5 files.</p> <p>6 A Okay.</p> <p>7 Q If you would turn to these inner</p> <p>8 pages, starting at the third page, 3842?</p> <p>9 A Okay.</p> <p>10 Q You see the -- someone written in by</p> <p>11 hand "highly mobile"?</p> <p>12 A Yes.</p> <p>13 Q Who is that?</p> <p>14 A That looks like my writing.</p> <p>15 Q Then the next page, your writing is</p> <p>16 at the bottom insert, the word "future"?</p> <p>17 A Yes.</p> <p>18 Q And what you're writing here is into</p> <p>19 a sentence that says, "The assumption used to</p> <p>20 estimate terminations," and you put in "Future</p> <p>21 terminations/retirements were from a Woolworth</p> <p>22 experience analysis study."</p> <p>23 A Yes.</p> <p>24 Q And what do you mean by that?</p> <p>25 A I'm not sure why I'm highlighting it</p>	<p style="text-align: right;">Page 224</p> <p>(16:08:22-16:09:26)</p> <p>1 GREFIG</p> <p>2 valuations you have to do it on an annual basis</p> <p>3 now, I guess under ERISA, and you continually</p> <p>4 develop actuarial gains or losses from one or</p> <p>5 more assumptions. Then it warrants an analysis</p> <p>6 of the experience.</p> <p>7 Let's say you've observed this over</p> <p>8 the past five years. You should run an analysis</p> <p>9 of experience over the past five years, and then</p> <p>10 you need to have a conversation with the client</p> <p>11 as to whether these observations were a</p> <p>12 permanent feature of their population, or</p> <p>13 there's something unusual that's given rise to</p> <p>14 these variations.</p> <p>15 Q So if over the course of, say, five</p> <p>16 years there are a lot of terminations, you'd</p> <p>17 have to have a conversation with your client</p> <p>18 about that?</p> <p>19 A Yes.</p> <p>20 Q And you don't have any doubt that you</p> <p>21 did so if there were such large terminations?</p> <p>22 A Well, that may have been the</p> <p>23 reason -- maybe there's another reason too. May</p> <p>24 have been a reason why we did the experience</p> <p>25 analysis.</p>

<p style="text-align: right;">Page 225</p> <p>(16:09:28-16:10:44)</p> <p>1 GREFIG</p> <p>2 But the other reason experience</p> <p>3 analysis might have been done is when I came</p> <p>4 aboard, the plan was a career average plan, as</p> <p>5 we mentioned before. There was no projection of</p> <p>6 benefits.</p> <p>7 Now FASB came along and dictated the</p> <p>8 use of the projected unit credit method, and</p> <p>9 under -- with -- I think we had to use a salary</p> <p>10 scale.</p> <p>11 THE WITNESS: Did FASB make use</p> <p>12 of a salary scale?</p> <p>13 MR. GOTTESDIENER: He can't</p> <p>14 answer either.</p> <p>15 A What sticks out in my mind is that</p> <p>16 the way the valuation was run prior to FASB was</p> <p>17 that it was run without rates of termination,</p> <p>18 termination rates, because what you're valuing</p> <p>19 under a career average plan like this, unit</p> <p>20 credit career average, is you're valuing the</p> <p>21 accrued benefit and discounting for probability</p> <p>22 that the employee reaches retirement on those</p> <p>23 various retirement ages. Okay.</p> <p>24 Now, full-blown set of actuarial</p> <p>25 assumptions would include termination rates, but</p>	<p style="text-align: right;">Page 227</p> <p>(16:12:16-16:13:24)</p> <p>1 GREFIG</p> <p>2 on the corner?</p> <p>3 A The one that's written sideways on</p> <p>4 the page? It looks like this one --</p> <p>5 Q Yes.</p> <p>6 A It says, "Put behind next page."</p> <p>7 Q So what you're doing is suggesting to</p> <p>8 whoever is the suggestee that the page in</p> <p>9 question be moved behind the next page?</p> <p>10 A Right. Yes.</p> <p>11 Q Do you see the next page? You're</p> <p>12 asking an interesting question. You nodded your</p> <p>13 head, but you didn't say anything.</p> <p>14 A I nodded my head. That's my</p> <p>15 handwriting. Convert TWRP to a cash balance</p> <p>16 plan September 1, 1995.</p> <p>17 Q And you circled the words cash</p> <p>18 balance and you wrote --</p> <p>19 A Why.</p> <p>20 Q -- why with a question mark.</p> <p>21 A Right.</p> <p>22 Q And my question was --</p> <p>23 A Why?</p> <p>24 Q Well, my question was, isn't that an</p> <p>25 interesting comment or question?</p>
<p style="text-align: right;">Page 226</p> <p>(16:10:48-16:12:06)</p> <p>1 GREFIG</p> <p>2 if you decrement the termination, and then go</p> <p>3 back and value the vesting benefit, you</p> <p>4 basically end up close to if not equal to what</p> <p>5 you have by not using termination rates at all.</p> <p>6 So when FASB came along and we needed</p> <p>7 to modify the way that the valuation was being</p> <p>8 run, we were in need of some experience</p> <p>9 analysis.</p> <p>10 Q When you came on board, did you run</p> <p>11 it or was it already being run?</p> <p>12 A No. I think I ran it. I ran it.</p> <p>13 Q Okay.</p> <p>14 A Again, it's an issue that sticks in</p> <p>15 my mind, because the actuary, Phil Mauer, who</p> <p>16 had run it, ran a projected unit credit cost</p> <p>17 method for FASB and put termination rates in,</p> <p>18 and you get decidedly different results.</p> <p>19 So that -- that may be the origin of</p> <p>20 the experience analysis, which would have put it</p> <p>21 in the late '80s.</p> <p>22 Q Looking at the other pages, do you</p> <p>23 see more of your handwriting on the document?</p> <p>24 A Yes.</p> <p>25 Q On the Page 3844, what does that say</p>	<p style="text-align: right;">Page 228</p> <p>(16:13:26-16:15:24)</p> <p>1 GREFIG</p> <p>2 A Yes, especially since we were well</p> <p>3 into the study in June of '95.</p> <p>4 Q So why were you asking why?</p> <p>5 A Let me see what else I noted here.</p> <p>6 Yes. In fact, the very next page showed a</p> <p>7 replacement ratio with the -- the next page</p> <p>8 shows replacement ratio with and without Social</p> <p>9 Security.</p> <p>10 Q What's the relevance of that to what</p> <p>11 you were just --</p> <p>12 A Well, we were talking about -- you</p> <p>13 asked me before what replacement ratios are and</p> <p>14 whether we used them, and yet according to this</p> <p>15 we did.</p> <p>16 I don't know whether I'm questioning</p> <p>17 the cash balance or whether I'm questioning</p> <p>18 September 1st.</p> <p>19 Q Well, you didn't circle</p> <p>20 September 1st.</p> <p>21 A I know I didn't, but changing of the</p> <p>22 plan provision in the middle of the year just</p> <p>23 complicates everybody's life.</p> <p>24 Q You see at the top it says,</p> <p>25 "Restructuring has reduced the \$12.3 million</p>

<p style="text-align: right;">Page 229</p> <p>(16:15:28-16:16:54)</p> <p>1 GREFIG</p> <p>2 normal cost by 20 percent"?</p> <p>3 A I don't know what restructuring</p> <p>4 means. I don't know whether that means changed</p> <p>5 to cash balance.</p> <p>6 Q Well, cash balance you know just from</p> <p>7 looking at this, and everything you do know is</p> <p>8 that there was no change yet.</p> <p>9 So this is -- restructuring is a</p> <p>10 reference to something that has occurred, has</p> <p>11 reduced --</p> <p>12 A Has reduced. Right.</p> <p>13 Q Does this refresh your recollection</p> <p>14 that your restructuring in this context means</p> <p>15 terminating a lot of employees?</p> <p>16 A Oh. Restructuring the company.</p> <p>17 Q Yes.</p> <p>18 A Could very well be.</p> <p>19 Q Does it refresh your recollection</p> <p>20 that you were aware of the fact that the company</p> <p>21 was terminating?</p> <p>22 A They were restructuring?</p> <p>23 Q And terminating a lot of employees.</p> <p>24 A No.</p> <p>25 Q So if you turn the next page, what's</p>	<p style="text-align: right;">Page 231</p> <p>(16:18:48-16:19:58)</p> <p>1 GREFIG</p> <p>2 pre-retirement pay replaced by other sources of</p> <p>3 income.</p> <p>4 And then Social Security amount is</p> <p>5 shown in the second replacement rate column.</p> <p>6 That subtracted from the first column gives you</p> <p>7 what's needed from the employer plan.</p> <p>8 Q So back to the question of target.</p> <p>9 So what does that mean?</p> <p>10 A Well, the target is -- the target</p> <p>11 maybe is -- is -- it covers all the columns.</p> <p>12 Maybe target shouldn't recover all -- cover all</p> <p>13 the columns.</p> <p>14 The first column is the target</p> <p>15 replacement ratio. Total age 65 replacement</p> <p>16 ratio.</p> <p>17 That's the target that you want to</p> <p>18 achieve through a combination of Social</p> <p>19 Security, personal savings and</p> <p>20 employer-sponsored benefits, plans.</p> <p>21 Q And what role did the target</p> <p>22 replacement ratio play in the design of the cash</p> <p>23 balance plan?</p> <p>24 A I don't know. I think this was more</p> <p>25 than likely a reference point. You know,</p>
<p style="text-align: right;">Page 230</p> <p>(16:17:02-16:18:42)</p> <p>1 GREFIG</p> <p>2 the word that you have handwritten in there?</p> <p>3 A To the extreme right? At the top of</p> <p>4 the column?</p> <p>5 Q I'm sorry. Maybe I'm looking at a</p> <p>6 different -- what's the next Bates number that</p> <p>7 you have on your document?</p> <p>8 A You mean down at the bottom?</p> <p>9 Q Yes. What's the next number?</p> <p>10 A 3845, goes to 3848.</p> <p>11 Q Okay. On 3848, what does target</p> <p>12 replacement ratios mean? That's your</p> <p>13 handwriting, right?</p> <p>14 A Yes.</p> <p>15 Q What does target replacement ratio</p> <p>16 mean?</p> <p>17 A Okay. Because of Social Security,</p> <p>18 the proportion of pay that's replaced by Social</p> <p>19 Security benefits varies by pay level.</p> <p>20 So there was a formulation of</p> <p>21 replacement ratios by pay level, which I</p> <p>22 believe -- I believe is shown in the first</p> <p>23 column.</p> <p>24 So that the higher -- more</p> <p>25 highly-paid employee needs less of their</p>	<p style="text-align: right;">Page 232</p> <p>(16:20:02-16:34:30)</p> <p>1 GREFIG</p> <p>2 somewhere along the line a question was where do</p> <p>3 we stand relative to these ideal replacement</p> <p>4 ratios.</p> <p>5 MR. GOTTESDIENER: We want to</p> <p>6 take a bathroom break. Not a</p> <p>7 problem.</p> <p>8 THE VIDEOGRAPHER: This</p> <p>9 concludes Tape Number 4. The time is</p> <p>10 4:17 p.m. We're off the record.</p> <p>11 (Recess taken)</p> <p>12 THE VIDEOGRAPHER: This begins</p> <p>13 Tape Number 5. The time is 4:31 p.m.</p> <p>14 We're back on the record.</p> <p>15 CONTINUED DIRECT EXAMINATION BY MR.</p> <p>16 GOTTESDIENER:</p> <p>17 Q Exhibit 92. Can you tell me what</p> <p>18 that is?</p> <p>19 (Exhibit 92, handwritten notes,</p> <p>20 was marked for identification, as of</p> <p>21 this date.)</p> <p>22 MR. GOTTESDIENER: Can I share</p> <p>23 this one? I don't have another copy.</p> <p>24 MS. WALWORTH: Yes.</p> <p>25 Q Just without having to read</p>

<p style="text-align: right;">Page 233</p> <p>(16:34:32-16:36:00)</p> <p>1 GREFIG</p> <p>2 everything in this, can you say that these are</p> <p>3 your handwritten notes?</p> <p>4 A Yes. Yes.</p> <p>5 Q Okay. Great. So they appear to be</p> <p>6 dated 4/21/95, and consist of four handwritten</p> <p>7 pages, and then attached are provisions of --</p> <p>8 I'm sorry. Are portions of valuation for the</p> <p>9 plan?</p> <p>10 A Yes.</p> <p>11 Q And at the back end there's some</p> <p>12 information about the 401(k) plan with some of</p> <p>13 your handwriting on the final three pages of the</p> <p>14 exhibit?</p> <p>15 A Yes.</p> <p>16 Q So this is -- if you look at the</p> <p>17 second page, you have a cash balance example?</p> <p>18 A Okay.</p> <p>19 Q Can you walk us through what you're</p> <p>20 doing there?</p> <p>21 A We have a \$3,000 accrued benefit.</p> <p>22 Q That's under the old plan formula,</p> <p>23 correct?</p> <p>24 A Presumably. Right. Because it's an</p> <p>25 annuity benefit, because to the right of taking</p>	<p style="text-align: right;">Page 235</p> <p>(16:37:20-16:38:32)</p> <p>1 GREFIG</p> <p>2 by something.</p> <p>3 A I multiplied that 2.1698 is a nine</p> <p>4 percent annuity deferred to age 65, I guess.</p> <p>5 Q Well, I'm still looking for really a</p> <p>6 dumb-down explanation.</p> <p>7 You have above accrued benefit is</p> <p>8 \$3,000. Then you are trying to determine on the</p> <p>9 participant's 55th birthday what is the present</p> <p>10 value of that age 55 benefit?</p> <p>11 A Yes.</p> <p>12 Q What I'm trying to get here is you're</p> <p>13 taking the annuity of 3,000 and you're</p> <p>14 multiplying it by some factor?</p> <p>15 A Yes.</p> <p>16 Q What -- where did you look to get</p> <p>17 that factor?</p> <p>18 A Probably the valuation assumptions,</p> <p>19 exclusive of termination rates. In other words</p> <p>20 it's simply any interest discount and a discount</p> <p>21 for mortality.</p> <p>22 Q What do you mean, a discount for</p> <p>23 mortality?</p> <p>24 A Well, you've discounted for the</p> <p>25 probability that the employee will survive to</p>
<p style="text-align: right;">Page 234</p> <p>(16:36:04-16:37:18)</p> <p>1 GREFIG</p> <p>2 the 3,000 times the nine percent annuity to get</p> <p>3 a present value of 6,510.</p> <p>4 Q You're in the second page. That's</p> <p>5 2485, right?</p> <p>6 A Yes.</p> <p>7 Q And when you said present value of</p> <p>8 accrued is \$3,000, and then are you -- were you</p> <p>9 referring to multiplying it by 2.1698?</p> <p>10 A Yes.</p> <p>11 Q And there's an arrow pointing to that</p> <p>12 from nine percent annuity?</p> <p>13 A That's nine percent annuity.</p> <p>14 Q And the age of the participant is age</p> <p>15 55, right?</p> <p>16 A Yes.</p> <p>17 Q And what you're doing here is -- what</p> <p>18 calculation are you performing?</p> <p>19 A Well, we're taking two and half</p> <p>20 percent of pay to get a pay credit of \$500.</p> <p>21 Q Could you just -- you're moving too</p> <p>22 fast for me. I'm not an actuary.</p> <p>23 Could you just -- what are you doing</p> <p>24 on that line present value of accrued? I want</p> <p>25 to understand. 3,000 -- you're multiplying it</p>	<p style="text-align: right;">Page 236</p> <p>(16:38:36-16:39:50)</p> <p>1 GREFIG</p> <p>2 retirement age.</p> <p>3 Q And that was something that you were</p> <p>4 doing to determine what?</p> <p>5 A Starting account balance.</p> <p>6 Q And when it says nine percent</p> <p>7 annuity, you mean you're taking the annuity and</p> <p>8 you're reducing it to a present value, using a</p> <p>9 nine percent interest rate and mortality?</p> <p>10 A Correct.</p> <p>11 Q And you're arriving at an opening</p> <p>12 cash balance of \$6,509?</p> <p>13 A Correct.</p> <p>14 Q Okay. Then what is immediately below</p> <p>15 the 6,500? Let's just round it. \$6,500 figure.</p> <p>16 What is that in hand?</p> <p>17 A That .6?</p> <p>18 Q Yes. On --</p> <p>19 A .6.</p> <p>20 Q .6. And there's also -- to the left</p> <p>21 of it there's a sign, isn't there?</p> <p>22 A Divide by.</p> <p>23 Q Okay. And you're taking .6 and</p> <p>24 you're doing what with it?</p> <p>25 A I'm dividing it into 6,509.</p>

<p style="text-align: right;">Page 237</p> <p>(16:39:56-16:41:46)</p> <p>1 GREFIG</p> <p>2 Q And you're arriving at what?</p> <p>3 A 10,849.</p> <p>4 Q And what is that?</p> <p>5 A Based upon what else I'm reading on</p> <p>6 this page, that would be the starting account</p> <p>7 balance for this theoretical employee.</p> <p>8 Q But what is -- what step is being</p> <p>9 performed with the .6?</p> <p>10 A At the bottom it says, "To provide a</p> <p>11 boost for those 50 and older with 15 years of</p> <p>12 service, the initial balance is divided by</p> <p>13 one" -- I'll read it and then explain it. "One</p> <p>14 minus four percent times the number of years</p> <p>15 between age 65 and current age, where age is not</p> <p>16 less than 55."</p> <p>17 So in this instance the employee is</p> <p>18 age 55. That's ten years until age 65 times</p> <p>19 four percent is 40 percent. One minus</p> <p>20 40 percent gives me 60 percent or .6.</p> <p>21 Q Okay. Where does all this come from</p> <p>22 to provide a boost?</p> <p>23 A I don't know where it came from, but</p> <p>24 the four percent -- what was the plan's early</p> <p>25 retirement reduction factors? Was four percent?</p>	<p style="text-align: right;">Page 239</p> <p>(16:43:08-16:45:46)</p> <p>1 GREFIG</p> <p>2 starting off at 10,849, which is the account</p> <p>3 balance determined above, that balance was</p> <p>4 brought forward at five percent interest and a</p> <p>5 \$500 pay credit was added to that balance to</p> <p>6 give 11,891 at the end of the year.</p> <p>7 And that was brought forward at five</p> <p>8 percent and another pay credit added, just</p> <p>9 starting the bootstrapping process of bringing</p> <p>10 that account balance forward.</p> <p>11 Q If you turn to the next page.</p> <p>12 A The top of the page on the left</p> <p>13 headed by cash balance appears to be a run-out</p> <p>14 through 1/1/2000 of the calculations that were</p> <p>15 started on the preceding page.</p> <p>16 Notice 10,849 grows to 11,891 a year,</p> <p>17 later to 12,986 a year later. So that's -- that</p> <p>18 cash balance is being incremented by both</p> <p>19 interest and by additional pay credits.</p> <p>20 Q Okay. But is the participant's</p> <p>21 benefit actually growing?</p> <p>22 MR. RUMELD: I object to the</p> <p>23 form.</p> <p>24 A Bringing it forward at five percent.</p> <p>25 It -- I don't know? I'd need a table of annuity</p>
<p style="text-align: right;">Page 238</p> <p>(16:41:48-16:43:04)</p> <p>1 GREFIG</p> <p>2 Q Four percent.</p> <p>3 A That's probably where the four</p> <p>4 percent came from.</p> <p>5 Q If you were 55 and had 15 years of</p> <p>6 service, it was six percent if you didn't have</p> <p>7 15 years. Is that a --</p> <p>8 A Here we have 15 years -- yes. Based</p> <p>9 upon what we were discussing before. Right.</p> <p>10 Q So does that refresh your</p> <p>11 recollection that this boost was in some way</p> <p>12 based on the prior plan early retirement</p> <p>13 subsidy?</p> <p>14 MR. RUMELD: I object to the</p> <p>15 form.</p> <p>16 A It may have been.</p> <p>17 Q Okay. Well, what else -- what else</p> <p>18 are we seeing here, that this participant is</p> <p>19 moving forward in time and has stayed with</p> <p>20 Woolworth through the conversion and it's</p> <p>21 earning -- withdrawn.</p> <p>22 Is -- does -- pay credits being added</p> <p>23 to the participant's account balance?</p> <p>24 A Right. Down -- down -- down at the</p> <p>25 bottom where there's that horizontal line,</p>	<p style="text-align: right;">Page 240</p> <p>(16:45:50-16:47:20)</p> <p>1 GREFIG</p> <p>2 factors to convert these cash balance amounts</p> <p>3 that are shown on the second page, you know, the</p> <p>4 10,000, 11,000, 16,000.</p> <p>5 Q But if you look at the bottom here,</p> <p>6 where it says the minimum annuity --</p> <p>7 A \$1,800.</p> <p>8 Q Yes. That went out over the cash</p> <p>9 balance annuity, doesn't it?</p> <p>10 A Why do you say that?</p> <p>11 Q Because the cash balance annuity is</p> <p>12 only \$1,500.</p> <p>13 A That's at 55.</p> <p>14 Q Yes.</p> <p>15 A Well, okay. So the -- doesn't look</p> <p>16 right. 16 -- I think that is a misstatement</p> <p>17 there. I think that's a mistake.</p> <p>18 Q The only mistake is that the</p> <p>19 participant's age is 55 at the time the assumed</p> <p>20 benefit commences.</p> <p>21 On the top of the second page he's 50</p> <p>22 at the start of the addition of the pay credits.</p> <p>23 Right?</p> <p>24 A Okay.</p> <p>25 Q Now, with that correction, what we</p>

<p style="text-align: right;">Page 241</p> <p>(16:47:24-16:48:50)</p> <p>1 GREFIG</p> <p>2 see here is what we were talking about earlier,</p> <p>3 that the effect of the use of the nine percent</p> <p>4 to start the participant off, notwithstanding</p> <p>5 the boost that this participant received, still</p> <p>6 didn't help him. So --</p> <p>7 A With the minimum annuity.</p> <p>8 Q You agree with me?</p> <p>9 A That's what it appears to say.</p> <p>10 MR. RUMELD: I object to form.</p> <p>11 Q You agree that you had to have known</p> <p>12 and communicated to Foot Locker that this would</p> <p>13 be the effect on their employees if they went</p> <p>14 ahead with the design that was one of the</p> <p>15 options on the table?</p> <p>16 MR. RUMELD: I object to the</p> <p>17 form.</p> <p>18 A That appears to be the case, yes.</p> <p>19 Q So the net effect for that employee</p> <p>20 was that he worked for five years and earned</p> <p>21 zero new pension benefits?</p> <p>22 A He earned no new annuity benefits.</p> <p>23 That's correct.</p> <p>24 Q Now, you're about to point to --</p> <p>25 A The cash balance he now has available</p>	<p style="text-align: right;">Page 243</p> <p>(16:50:26-16:51:40)</p> <p>1 GREFIG</p> <p>2 considered as an option under --</p> <p>3 Q But it would have been one that you</p> <p>4 made available to Foot Locker?</p> <p>5 MR. RUMELD: Objection to form.</p> <p>6 A Something that could have been</p> <p>7 considered, yes.</p> <p>8 Q Given a choice between a lump sum of</p> <p>9 16,609 and \$1,800 a year for the rest of your</p> <p>10 life from age 55, which is better?</p> <p>11 MR. RUMELD: I object to the</p> <p>12 form.</p> <p>13 A I -- I can't -- can't make that kind</p> <p>14 of evaluation. Depends upon the employer.</p> <p>15 Depends upon prior practices in order to --</p> <p>16 Q Well, if a friend asked you for</p> <p>17 advice.</p> <p>18 A Well, then I would ask him about a</p> <p>19 number of other contingencies involved here.</p> <p>20 Has the employer ever provided COLAs under the</p> <p>21 plan.</p> <p>22 So there may be advantages to leaving</p> <p>23 my lump sum in there and taking it in the form</p> <p>24 of an annuity, as one example.</p> <p>25 And that not having been involved in</p>
<p style="text-align: right;">Page 242</p> <p>(16:48:52-16:50:20)</p> <p>1 GREFIG</p> <p>2 to him. So he had no cash balance available to</p> <p>3 him before, and an annuity of \$1,800 per year,</p> <p>4 and now he's got an annuity of \$1,800 per year</p> <p>5 and \$16,600 in the bank.</p> <p>6 Q If I'm understanding what you're</p> <p>7 saying is that this participant is able to</p> <p>8 access in a lump sum form his pension benefit?</p> <p>9 A Right. He has access to \$16,600 in</p> <p>10 his account balance --</p> <p>11 Q And --</p> <p>12 A -- which he did not have before the</p> <p>13 change.</p> <p>14 Q But you're aware that there's no need</p> <p>15 to convert a defined benefit plan to a cash</p> <p>16 balance defined benefit plan to give people a</p> <p>17 lump sum option?</p> <p>18 A That's correct.</p> <p>19 Q And did Foot Locker consider just</p> <p>20 offering people a lump sum option without</p> <p>21 converting the plan to a cash balance plan?</p> <p>22 A I don't know. I don't remember. And</p> <p>23 it doesn't seem to show up in any of the summary</p> <p>24 material that we looked at earlier today, so I</p> <p>25 don't know whether the straight-out lump sum was</p>	<p style="text-align: right;">Page 244</p> <p>(16:51:42-16:52:34)</p> <p>1 GREFIG</p> <p>2 this for 13 years, I'm sure that there are other</p> <p>3 pros and -- that go along with having the</p> <p>4 annuity.</p> <p>5 Q But let's say -- don't assume that --</p> <p>6 that the friend could count on a COLA. What's</p> <p>7 the answer?</p> <p>8 MR. RUMELD: I object to the</p> <p>9 form.</p> <p>10 A I'd take the annuity.</p> <p>11 Q Why?</p> <p>12 A Well, you got -- as I said, there are</p> <p>13 probably a number of other advantages to leaving</p> <p>14 your money in the plan, even if the employer</p> <p>15 hasn't provided a COLA to date. You've got a</p> <p>16 PBGC guarantee of your accrued benefit.</p> <p>17 Q Isn't the annuity worth more?</p> <p>18 A Is the annuity worth more?</p> <p>19 Q Yes.</p> <p>20 A Than what?</p> <p>21 Q Then taking a lump sum.</p> <p>22 A No. It's about the same actually.</p> <p>23 Annuity at 65 --</p> <p>24 Q At 55.</p> <p>25 A Oh. At 55.</p>

<p style="text-align: right;">Page 245</p> <p>(16:52:36-16:53:36)</p> <p>1 GREFIG</p> <p>2 Q Talking about the early retirement</p> <p>3 subsidy.</p> <p>4 A So he's going to take an \$1,800</p> <p>5 annuity? Rule of thumb, maybe it's worth</p> <p>6 \$18,000.</p> <p>7 Q So you agree that the early</p> <p>8 retirement subsidized annuity is more valuable</p> <p>9 than lump sum?</p> <p>10 MR. RUMELD: I object to form.</p> <p>11 A Somewhere in there, in the same</p> <p>12 ballpark, but --</p> <p>13 Q But more valuable to the participant?</p> <p>14 MR. RUMELD: I object to the</p> <p>15 form.</p> <p>16 A Under these circumstances, maybe.</p> <p>17 But again, that -- that needs to be valued</p> <p>18 adequately with, you know, economic assumptions</p> <p>19 and annuity conversions and so forth.</p> <p>20 But on a ballpark basis, they're --</p> <p>21 they have equivalent value at this point in</p> <p>22 time.</p> <p>23 Q Now you're changing your answer, or</p> <p>24 are you sticking with your answer that --</p> <p>25 A I'm sticking with my answer, that,</p>	<p style="text-align: right;">Page 247</p> <p>(16:54:56-16:55:54)</p> <p>1 GREFIG</p> <p>2 the GATT rate during 1995 fell steadily, to the</p> <p>3 point where the conversion when it occurred</p> <p>4 using the December rate used a rate of</p> <p>5 6.06 percent?</p> <p>6 A That was the GATT rate.</p> <p>7 Q And my question is, at the time you</p> <p>8 and the people you were working with communally</p> <p>9 on the conversion project were aware that the</p> <p>10 GATT rate was steadily falling?</p> <p>11 MR. RUMELD: I object to the</p> <p>12 form.</p> <p>13 A I -- I don't know. I don't.</p> <p>14 Q Well, you do agree you're not taking</p> <p>15 back your answer about a moment ago, where you</p> <p>16 said that you would have necessarily been</p> <p>17 watching the movement of the GATT rate?</p> <p>18 MR. RUMELD: I object to the</p> <p>19 form.</p> <p>20 A Yes.</p> <p>21 Q You're saying you don't remember?</p> <p>22 A As a byproduct, but it was not -- it</p> <p>23 was not -- I don't recall discussions about</p> <p>24 interest rate trends in terms of what was</p> <p>25 happening during that year.</p>
<p style="text-align: right;">Page 246</p> <p>(16:53:38-16:54:50)</p> <p>1 GREFIG</p> <p>2 you know --</p> <p>3 Q Take the annuity.</p> <p>4 MR. RUMELD: I object to the</p> <p>5 form.</p> <p>6 A This needs to be finalized, but as it</p> <p>7 stands now, with the guesstimate as to the</p> <p>8 annuity value at 55 versus 16,600, the value of</p> <p>9 the annuity is about the same as the value of</p> <p>10 the cash balance.</p> <p>11 Q Well, you see here that there's -- in</p> <p>12 your notes that there's a -- you mention</p> <p>13 yourself, the GATT. You're writing down GATT</p> <p>14 mortality and interest, and it's assumed to be</p> <p>15 eight percent? Page 3?</p> <p>16 A Yes. I see that.</p> <p>17 Q So why are you assuming it to be</p> <p>18 eight percent?</p> <p>19 A Because probably what it was at some</p> <p>20 point in time during the study.</p> <p>21 Q And you agree that during the study</p> <p>22 you would have been monitoring as the study</p> <p>23 progressed the movement of the GATT rate?</p> <p>24 A Oh. Had to. Yes.</p> <p>25 Q You'd have to. And you agree that</p>	<p style="text-align: right;">Page 248</p> <p>(16:55:56-16:57:00)</p> <p>1 GREFIG</p> <p>2 Q But you think that the eight percent</p> <p>3 here is reflecting the prevailing GATT rate?</p> <p>4 A Of the realities at that point in</p> <p>5 time, it's probably where the eight percent came</p> <p>6 from.</p> <p>7 Q And you agree that mathematically</p> <p>8 that as that rate fell, the wear-away affect</p> <p>9 would get larger and larger if you were to use a</p> <p>10 nine percent interest rate, and you were looking</p> <p>11 at a participant taking a lump sum sometime</p> <p>12 after the conversion?</p> <p>13 A If the lump sum would continue to</p> <p>14 grow in value, yes.</p> <p>15 Q I don't understand your answer.</p> <p>16 A The \$1,800 is worth more at six</p> <p>17 percent than it is at eight percent. So as the</p> <p>18 GATT rate fell and we were forced to use the</p> <p>19 GATT rate for lump sum calculations, the</p> <p>20 employee's lump sum benefit increases.</p> <p>21 Q Okay. The \$1,800 is the early</p> <p>22 retirement subsidized annuity?</p> <p>23 A Annuity. Right.</p> <p>24 Q That's not what the participant was</p> <p>25 receiving the present value of.</p>

<p style="text-align: right;">Page 249</p> <p>(16:57:04-16:58:18)</p> <p>1 GREFIG</p> <p>2 A That's what he would get the present</p> <p>3 value of if a lump sum was paid from the plan</p> <p>4 under GATT rates. It would be --</p> <p>5 Q It would be using his \$3,000, not</p> <p>6 his -- not the \$1,800.</p> <p>7 A If they paid it out at the age 65</p> <p>8 accrued benefits you're correct. It would be</p> <p>9 the \$3,000 paid out at 65, but at six percent</p> <p>10 that has a greater value than it does at eight</p> <p>11 percent.</p> <p>12 Q And the lump sum is -- showed in the</p> <p>13 middle of the third page towards -- three</p> <p>14 quarters of the way down, you're showing the use</p> <p>15 of the GATT rate to present value the deferred</p> <p>16 annuity.</p> <p>17 A Right.</p> <p>18 Q So it's not of the 18. It's of the</p> <p>19 3,000.</p> <p>20 A It would be of the 3,000. Right.</p> <p>21 Q And what I'm asking about is --</p> <p>22 A In other words, what you're saying,</p> <p>23 before the lump sum -- electing a lump sum under</p> <p>24 a defined benefit plan, any defined benefit</p> <p>25 plan, the employer is not obligated to include</p>	<p style="text-align: right;">Page 251</p> <p>(16:59:26-17:00:32)</p> <p>1 GREFIG</p> <p>2 less on the day of the conversion, right? His</p> <p>3 cash balance account is less than --</p> <p>4 A No. His entitlement is not less.</p> <p>5 That's the starting balance -- starting balance</p> <p>6 under the cash balance plan.</p> <p>7 Q That's exactly what I'm asking about.</p> <p>8 A His entitlement is almost \$12,000,</p> <p>9 and that doesn't change.</p> <p>10 Q But my point, sir, is that he's not</p> <p>11 earning anything new.</p> <p>12 A Oh. With the additional pay credits</p> <p>13 you mean.</p> <p>14 Q It's -- these additions -- if this</p> <p>15 person -- let's take the same example, but not</p> <p>16 add the boost on the second page, where you</p> <p>17 boosted him up to \$10,000.</p> <p>18 A Yes.</p> <p>19 Q Say my client, Jeffrey Osberg, who</p> <p>20 didn't get the enhancement, if his opening</p> <p>21 balance is \$6,500, but if he left the next day</p> <p>22 he would have to be paid 11,000.</p> <p>23 A Correct.</p> <p>24 Q That phenomenon is what communally</p> <p>25 was referred to as a wear-away.</p>
<p style="text-align: right;">Page 250</p> <p>(16:58:20-16:59:22)</p> <p>1 GREFIG</p> <p>2 early retirement subsidies in the lump sum, the</p> <p>3 lump sum out at age 65 accrued benefit. Right.</p> <p>4 Q So you'd see here -- if you go back</p> <p>5 to the prior page, you see how the 3,000 is</p> <p>6 being reduced to a present value using a nine</p> <p>7 percent and mortality and you end up with</p> <p>8 \$6,500?</p> <p>9 A Yes.</p> <p>10 Q And then on the following page,</p> <p>11 you're taking the \$3,000 and you're paying it</p> <p>12 out?</p> <p>13 A Lump-summing it.</p> <p>14 Q You're lump-summing it, but using the</p> <p>15 legally-required rate which is capped at eight</p> <p>16 percent?</p> <p>17 A Yes.</p> <p>18 Q And that that \$11,000 is a whole lot</p> <p>19 more than the \$6,500 without that boost?</p> <p>20 MR. RUMELD: I object to the</p> <p>21 form.</p> <p>22 A Right. His entitlement. Correct.</p> <p>23 His entitlement.</p> <p>24 Q But you're starting people off --</p> <p>25 even the person who got the boost is getting</p>	<p style="text-align: right;">Page 252</p> <p>(17:00:34-17:01:08)</p> <p>1 GREFIG</p> <p>2 A Oh.</p> <p>3 MR. RUMELD: I object to the</p> <p>4 form.</p> <p>5 Q Right?</p> <p>6 A Okay.</p> <p>7 Q You agree?</p> <p>8 MR. RUMELD: I object to the</p> <p>9 form.</p> <p>10 Q You agree that during the time that</p> <p>11 conversion was being planned and discussed, that</p> <p>12 you communicated this phenomenon to Foot Locker</p> <p>13 very clearly, right?</p> <p>14 MR. RUMELD: I object to the</p> <p>15 form.</p> <p>16 A Yes.</p> <p>17 Q And it was discussed as -- one of the</p> <p>18 ways it was discussed was it was called</p> <p>19 wear-away?</p> <p>20 MR. RUMELD: I object to the</p> <p>21 form.</p> <p>22 A Okay.</p> <p>23 Q You agree?</p> <p>24 A I understand what you're saying to</p> <p>25 me.</p>

<p style="text-align: right;">Page 253</p> <p>(17:01:08-17:01:52)</p> <p>1 GREFIG</p> <p>2 Q But I'm not hearing an answer.</p> <p>3 A Now I understand what you mean by</p> <p>4 wear-away. And it's likely that the term may</p> <p>5 have been used, yes.</p> <p>6 Q And it refreshes your recollection,</p> <p>7 now that we've been through this a bit, that</p> <p>8 this was something that was clearly by you</p> <p>9 communicated to the people at Foot Locker --</p> <p>10 MR. RUMELD: Objection to the</p> <p>11 form.</p> <p>12 Q -- so they could make their own</p> <p>13 decision, if that's the way they wanted the plan</p> <p>14 designed?</p> <p>15 MR. RUMELD: I object to the</p> <p>16 form.</p> <p>17 A Yes.</p> <p>18 Q You were just doing your job?</p> <p>19 MR. RUMELD: I object to the</p> <p>20 form.</p> <p>21 A Yes. Yes. It's one of the ways that</p> <p>22 the --</p> <p>23 Q One of the ways it could have been</p> <p>24 designed, but remember at the very beginning you</p> <p>25 gave Mr. Kiley options of using a much lower</p>	<p style="text-align: right;">Page 255</p> <p>(17:02:40-17:03:56)</p> <p>1 GREFIG</p> <p>2 where it is, because no tumors have formed yet,</p> <p>3 but they have me on medication that lowers my</p> <p>4 testosterone level, which makes me somewhat of a</p> <p>5 dishrag at times.</p> <p>6 They continue to monitor my PSA</p> <p>7 levels, and every time it varies they give me</p> <p>8 another shot to knock down the testosterone, but</p> <p>9 they say eventually that -- that treatment, the</p> <p>10 cancer tissue learns how to grow, even in a</p> <p>11 testosterone-free environment, and we got to</p> <p>12 kick it up to chemo or some other approach.</p> <p>13 My father had -- it's -- they put him</p> <p>14 in a nursing home last week. He's got -- he had</p> <p>15 prostate cancer surgery 30 years ago, and they</p> <p>16 just discovered conglomeration of prostate and</p> <p>17 bladder cancer cells in his hip, so he's going</p> <p>18 under radiation therapy. Must be in the genes.</p> <p>19 Q Sorry to hear that.</p> <p>20 A Then they sent me for radiation</p> <p>21 treatment and screwed up my guts. So don't ever</p> <p>22 miss a physical, an annual physical.</p> <p>23 Q 93.</p> <p>24 (Exhibit 93, fax, was marked</p> <p>25 for identification, as of this date.)</p>
<p style="text-align: right;">Page 254</p> <p>(17:01:58-17:02:38)</p> <p>1 GREFIG</p> <p>2 interest rate to create a larger opening</p> <p>3 balance. Remember that?</p> <p>4 A No, but likely --</p> <p>5 Q You don't remember that we talked</p> <p>6 about it at the beginning of the deposition?</p> <p>7 A Likely -- well, we talked about where</p> <p>8 the nine percent came from.</p> <p>9 Q Well, we talked about that, but I</p> <p>10 also showed you a document that you sent him</p> <p>11 where you created that draft commentary on --</p> <p>12 A Okay.</p> <p>13 Q Do you remember that now?</p> <p>14 MR. RUMELD: I object to the</p> <p>15 form.</p> <p>16 A It's a long time ago. Not 17 years.</p> <p>17 Q No, no. I'm talking about earlier in</p> <p>18 today's deposition. But how is your health?</p> <p>19 A I appreciate that.</p> <p>20 Q How is your health, sir?</p> <p>21 A How is my health?</p> <p>22 Q Yes. Because I understand that you</p> <p>23 may not be the best of health.</p> <p>24 A I'm -- I have prostate cancer that</p> <p>25 has metastasized in the body. They don't know</p>	<p style="text-align: right;">Page 256</p> <p>(17:03:56-17:05:42)</p> <p>1 GREFIG</p> <p>2 Q Let me ask you if this is a fax that</p> <p>3 you and Mr. Cassidy received from Tom Kiley with</p> <p>4 another version of the document entitled</p> <p>5 Woolworth retirement program review.</p> <p>6 A This first page, second -- seems to</p> <p>7 be under objectives. It was another bullet</p> <p>8 point put in here that I don't remember from the</p> <p>9 prior documents, sharing of responsibility for</p> <p>10 retirement savings with associates.</p> <p>11 Q So that's been added in?</p> <p>12 A It -- I believe so, based on -- I</p> <p>13 don't -- I don't recall from a few hours ago. I</p> <p>14 haven't seen that in the first objectives.</p> <p>15 Q So that's a kind of a euphemistic way</p> <p>16 of making employees fund their own retirements?</p> <p>17 MR. RUMELD: Objection to the</p> <p>18 form.</p> <p>19 A Contribute toward it. I wouldn't say</p> <p>20 fund their own, but certainly contribute toward</p> <p>21 it.</p> <p>22 Q Well, you agree that -- now that</p> <p>23 you've seen these documents and we've spoken for</p> <p>24 these hours, that you knew at the time that</p> <p>25 Woolworth was attempting to lower its costs --</p>

<p style="text-align: right;">Page 257</p> <p>(17:05:46-17:06:42)</p> <p>1 GREFIG</p> <p>2 MR. RUMELD: Objection to the</p> <p>3 form.</p> <p>4 Q -- for the retirement plan?</p> <p>5 A Based upon comments that I see in</p> <p>6 here, yes. That was a stated objective.</p> <p>7 Q And -- so now you're remembering that</p> <p>8 as well?</p> <p>9 A No. I'm acknowledging that there's</p> <p>10 documents here that stated as one of their</p> <p>11 objectives.</p> <p>12 I do not recall -- have no memory of</p> <p>13 ever having conducted a conversation with</p> <p>14 anybody at Woolworth about cost reduction one</p> <p>15 way or other being an element of this analysis.</p> <p>16 Undoubtedly, based upon the documents</p> <p>17 that you're showing me, it was. But does it</p> <p>18 come out -- forward in my mind as part of the</p> <p>19 conversation? No. Because I don't recall</p> <p>20 conversation.</p> <p>21 Q I'm not asking about specific</p> <p>22 conversation.</p> <p>23 I'm asking about did you know as a</p> <p>24 general matter, the residue of all of the</p> <p>25 contacts you have, are you not now remembering</p>	<p style="text-align: right;">Page 259</p> <p>(17:07:56-17:09:10)</p> <p>1 GREFIG</p> <p>2 A 2792. Yes. That's my handwriting.</p> <p>3 2791 might very well be my handwriting. 93,</p> <p>4 yes. That's my handwriting.</p> <p>5 Q And what you're writing in, there's a</p> <p>6 recommendation about implementing the 401(k)</p> <p>7 plan.</p> <p>8 What you're writing is "Strengthening</p> <p>9 our retirement program." Your contribution</p> <p>10 there is "versus competition"?</p> <p>11 A Competition. Yes.</p> <p>12 Q Now, does that help bring about that</p> <p>13 you were involved in promoting the company's</p> <p>14 objective of positioning itself vis-a-vis</p> <p>15 competitors?</p> <p>16 A No. I wasn't promoting the company's</p> <p>17 objectives. The company got to make its own</p> <p>18 decision.</p> <p>19 What's happening here is -- as you</p> <p>20 look at it is that I was sent a document to</p> <p>21 review, and as I'm going through it, it becomes</p> <p>22 apparent that as a result of conversations that</p> <p>23 I had with the client, that what they were doing</p> <p>24 relative to the competition was important to</p> <p>25 them.</p>
<p style="text-align: right;">Page 258</p> <p>(17:06:46-17:07:52)</p> <p>1 GREFIG</p> <p>2 that this was an objective on the conversion?</p> <p>3 A No.</p> <p>4 Q But you're just -- but -- withdrawn.</p> <p>5 You're not doubting that it was?</p> <p>6 A Oh, no, no.</p> <p>7 Q Now, is this your handwriting on that</p> <p>8 page with the objectives?</p> <p>9 A Yes.</p> <p>10 Q And you're writing, "Younger, more</p> <p>11 mobile"?</p> <p>12 A Yes.</p> <p>13 Q Then you're drawing an arrow, and you</p> <p>14 say, "Therefore more terminated vesteds and</p> <p>15 inactive"?</p> <p>16 A In, I-N, inactives. More terminated</p> <p>17 vested employees. In other words --</p> <p>18 Q "Therefore more TVs," and then is</p> <p>19 that -- is that I-N or E-E?</p> <p>20 A No. I-N.</p> <p>21 Q Okay. "More TVs in inactives"?</p> <p>22 A Right.</p> <p>23 Q I understand. And then on these</p> <p>24 other pages, are these your handwritten notes,</p> <p>25 drawings, insertions of numbers and percentages?</p>	<p style="text-align: right;">Page 260</p> <p>(17:09:10-17:11:14)</p> <p>1 GREFIG</p> <p>2 So when I see a statement that says</p> <p>3 strengthens our retirement program, it -- it is</p> <p>4 just hanging out there.</p> <p>5 What do you mean it strengthens the</p> <p>6 retirement program? Well, it strengthens it</p> <p>7 relative to the competition.</p> <p>8 So I'm basically just regurgitating</p> <p>9 some of the objectives that the client had</p> <p>10 identified.</p> <p>11 Q Okay. And the next page is -- also</p> <p>12 has your handwritten notes?</p> <p>13 A They appear to be my handwriting,</p> <p>14 yes.</p> <p>15 Q And then in the other pages if you</p> <p>16 could just flip through. You see other</p> <p>17 handwriting?</p> <p>18 A Yes. 2797, that's my handwriting,</p> <p>19 but I don't know what it means. And that --</p> <p>20 that's 6 -- it looks like 6.5, but I don't know</p> <p>21 if that's -- I don't know if the 6.5 is another</p> <p>22 plan cost.</p> <p>23 Here it is. Two pages earlier, 2795,</p> <p>24 Page 2795, estimated plan cost of 6.5. So</p> <p>25 that's where the 6.5 came from. Yes. That's</p>

<p style="text-align: right;">Page 261</p> <p>(17:11:34-17:13:18)</p> <p>1 GREFIG</p> <p>2 where the 6.5 came from.</p> <p>3 Q If you turn to career average pay</p> <p>4 plan -- sorry. Career average plan highlights?</p> <p>5 A This is further back in the document?</p> <p>6 Q It would be 28.</p> <p>7 A 28. I got -- I have 03 -- 01 as a</p> <p>8 plan highlights.</p> <p>9 Q You see how it has your handwriting?</p> <p>10 You're asking post GATT?</p> <p>11 A Right.</p> <p>12 Q So GATT you're aware at the time is</p> <p>13 not just about international trade?</p> <p>14 A Well, yeah. We learned that from one</p> <p>15 of your documents.</p> <p>16 Q Okay. 94.</p> <p>17 (Exhibit 94, notes, was marked</p> <p>18 for identification, as of this date.)</p> <p>19 Q These are also your handwritten</p> <p>20 notes, sir; isn't that correct?</p> <p>21 A No. This is a mixture.</p> <p>22 Q Okay. The top is you have written in</p> <p>23 the darker color "Woolworth cash balance"?</p> <p>24 A That appears to be my writing, right.</p> <p>25 And "Please call" appears to be me, but the</p>	<p style="text-align: right;">Page 263</p> <p>(17:15:04-17:17:06)</p> <p>1 GREFIG</p> <p>2 Q A July 1995 document sent to you by</p> <p>3 Tom Kiley.</p> <p>4 What you see going on here is that</p> <p>5 there's a continuously evolving presentation</p> <p>6 that appears to be being readied for</p> <p>7 decision-makers; is that fair?</p> <p>8 A That's what it appears to be, yes.</p> <p>9 Q And what you're seeing is consistent</p> <p>10 with whatever faint recollection you have of</p> <p>11 events, that there was a fair bit of back and</p> <p>12 forth between you and Tom Kiley in this regard?</p> <p>13 A Yes.</p> <p>14 Q And on Page 2749, I would ask you if</p> <p>15 you recognize your handwriting there.</p> <p>16 A Yes. That's my handwriting.</p> <p>17 Q And what does it say at the very top</p> <p>18 before -- before the word annual?</p> <p>19 A It says "Design we are proposing."</p> <p>20 Q Okay. And --</p> <p>21 A Which didn't mean -- did not mean</p> <p>22 Mercer. I'm speaking in Tom Kiley's voice here,</p> <p>23 reviewing one of his documents.</p> <p>24 Q You're assisting him in making his</p> <p>25 recommendation?</p>
<p style="text-align: right;">Page 262</p> <p>(17:13:20-17:15:04)</p> <p>1 GREFIG</p> <p>2 other -- other notations are not.</p> <p>3 Q Okay. And --</p> <p>4 A This appears to be an estimate of</p> <p>5 proportion of terminations and retirees who</p> <p>6 elect lump sums.</p> <p>7 Q And in what years?</p> <p>8 A 1994, 1995. The 19 -- I don't know</p> <p>9 where this comes from. We didn't have lump sum</p> <p>10 options in the plan in '94 or '95.</p> <p>11 Q So that was term vesteds -- I'm</p> <p>12 sorry. That was de minimis lump sums, right?</p> <p>13 A No. De minimis lump sum is</p> <p>14 mandatory, isn't it? This says elect lump sums.</p> <p>15 So there must have been some provision where the</p> <p>16 participant could choose to take it. This may</p> <p>17 come from another plan. I don't know.</p> <p>18 Q In any event, the -- that handwriting</p> <p>19 in the middle is not yours?</p> <p>20 A None of this is mine. This</p> <p>21 (indicating) is and this (indicating) is.</p> <p>22 Q Okay. Now, what -- showing you 95.</p> <p>23 (Exhibit 95, document dated</p> <p>24 7/95, was marked for identification,</p> <p>25 as of this date.)</p>	<p style="text-align: right;">Page 264</p> <p>(17:17:06-17:18:42)</p> <p>1 GREFIG</p> <p>2 A Yes.</p> <p>3 Q Exhibit 96.</p> <p>4 (Exhibit 96, notes, was marked</p> <p>5 for identification, as of this date.)</p> <p>6 Q These notes came from Mercer's files.</p> <p>7 You can see from the Bates stamp at the right</p> <p>8 corner, but do you recognize that handwriting?</p> <p>9 A That's my handwriting.</p> <p>10 Q Okay. So tell me if I'm interpreting</p> <p>11 correctly.</p> <p>12 You have 8/95 draft at the right, and</p> <p>13 I'm going to read into the record and you tell</p> <p>14 me where I'm wrong. "Preface. Remove a DB</p> <p>15 plan. It is a DB plan."</p> <p>16 A Right.</p> <p>17 Q "3, always get interest. Why 501 has</p> <p>18 wording"?</p> <p>19 A That looks likes H-R-S. It looks</p> <p>20 like short for hours. 501 hours.</p> <p>21 Q Okay. Why -- I see. Okay. "Why</p> <p>22 500 hours -- 501 hours wording."</p> <p>23 A The numbers on the left are in</p> <p>24 reference to this document that we just looked</p> <p>25 at?</p>

<p style="text-align: right;">Page 265</p> <p>(17:18:44-17:20:00)</p> <p>1 GREFIG</p> <p>2 Q You're asking me, and I wish I could</p> <p>3 tell you. The date on this just says 8/95.</p> <p>4 So --</p> <p>5 A It's after the date on this. But</p> <p>6 that's -- it's a long time between them.</p> <p>7 Q There is at least from what we</p> <p>8 received --</p> <p>9 A Yes. It's not -- I'm not referencing</p> <p>10 the same document.</p> <p>11 Q You're referencing a different</p> <p>12 version?</p> <p>13 A It appears to be a different one</p> <p>14 because there's no -- no cross-reference here.</p> <p>15 Okay.</p> <p>16 Q Well, just -- while you brought that</p> <p>17 up, let me ask you if 97 -- I think I only have</p> <p>18 one copy of this.</p> <p>19 (Exhibit 97, document, was</p> <p>20 marked for identification, as of this</p> <p>21 date.)</p> <p>22 Q 97 is yet another version, but with</p> <p>23 handwriting that's not yours, but that perhaps</p> <p>24 you might recognize.</p> <p>25 A I don't recognize the handwriting on</p>	<p style="text-align: right;">Page 267</p> <p>(17:22:02-17:23:14)</p> <p>1 GREFIG</p> <p>2 minus four percent times years? The four</p> <p>3 percent times year would have been the</p> <p>4 reduction.</p> <p>5 So one minus that amount gives you</p> <p>6 early retirement factor, so that's what that is.</p> <p>7 Conversion to account balance. Divide by the</p> <p>8 ERF, early retirement factor.</p> <p>9 Q Then you have "Interest credit on 1/1</p> <p>10 balance. Two, no date of distribution. TVs who</p> <p>11 leave balance in plan." Right now I'm just</p> <p>12 asking to translate your handwriting.</p> <p>13 A Oh.</p> <p>14 Q Did I read that --</p> <p>15 A Yes. You read that correctly. Yes.</p> <p>16 Q Then it says "QDRO actuarial value</p> <p>17 review requirements"?</p> <p>18 A Yes. That's what it says.</p> <p>19 Q Then it has "QPRSA plus accrual</p> <p>20 benefit discussed with Carol"?</p> <p>21 A Yes. That's what that says.</p> <p>22 Q And you would take that as reference</p> <p>23 of a discussion you had with Carol Kanowicz?</p> <p>24 A Yes. Over the qualified</p> <p>25 pre-retirement survivor annuity. Isn't this --</p>
<p style="text-align: right;">Page 266</p> <p>(17:20:38-17:21:54)</p> <p>1 GREFIG</p> <p>2 this.</p> <p>3 Q Let's go back to the prior exhibit,</p> <p>4 the handwritten notes.</p> <p>5 A Right. 96?</p> <p>6 Q Yes. So under the "Always gets</p> <p>7 interest," there's you putting down 4, and it</p> <p>8 says "Will need to calculate an accrued benefit</p> <p>9 at times other than term or retirement, e.g.</p> <p>10 responding to a participant's request."</p> <p>11 A Correct.</p> <p>12 Q "Review" --</p> <p>13 A "Application of comp limit."</p> <p>14 Q And that's the 415 limit?</p> <p>15 A No.</p> <p>16 Q That's --</p> <p>17 A 415 is a benefit limit. There's</p> <p>18 another --</p> <p>19 Q That's the 401(a)17 limit, not the</p> <p>20 415 limit?</p> <p>21 A Correct.</p> <p>22 Q Then at the right you have</p> <p>23 "Conversion to account balance divided by." Is</p> <p>24 that early retirement factor, ERF?</p> <p>25 A Yes. Remember before we had one</p>	<p style="text-align: right;">Page 268</p> <p>(17:23:16-17:24:20)</p> <p>1 GREFIG</p> <p>2 you know, this appears to me to be a review of a</p> <p>3 plan document.</p> <p>4 Q And does that --</p> <p>5 A But that's -- August of '95?</p> <p>6 Q Does that become confirmed in your</p> <p>7 mind when you see that it says 8/95 draft?</p> <p>8 A I'm guessing that is a plan document.</p> <p>9 Q Okay.</p> <p>10 A I mean, we're looking at all of these</p> <p>11 things put together. I'm just saying that given</p> <p>12 the nature of my comments here, they appear to</p> <p>13 be more along the lines of comments that I would</p> <p>14 make about a plan document than it would about a</p> <p>15 presentation.</p> <p>16 Q Understood. So then if you look</p> <p>17 down, does it then say next to 32, "Do we want</p> <p>18 to continue this? Doesn't seem to allow for</p> <p>19 offset of accrued. See Page 55, 5.06."</p> <p>20 A Got to be a plan document, because</p> <p>21 the presentations aren't numbered that way.</p> <p>22 Q Sir, my narrow question is did I read</p> <p>23 that --</p> <p>24 A Yes, you read it correctly.</p> <p>25 Q Thank you. So then it says Page 24,</p>

<p style="text-align: right;">Page 269</p> <p>(17:24:24-17:25:30)</p> <p>1 GREFIG</p> <p>2 "Uses comp over 200,000 for pre '89 years."</p> <p>3 A That's what it says. Yes.</p> <p>4 Q And then the next page it says, "Can</p> <p>5 we pay the spouse the lump sum of the cash</p> <p>6 balance or the 50 percent annuity at the</p> <p>7 spouse's election."</p> <p>8 A Okay. That's what it says.</p> <p>9 Q Then 39 has your initials next to it,</p> <p>10 right?</p> <p>11 A Yes.</p> <p>12 Q And then it seems to say "Also TV</p> <p>13 notes"?</p> <p>14 A Yes.</p> <p>15 Q So that would be terminated vesteds?</p> <p>16 A Vesteds, right.</p> <p>17 Q And what do you think the reference</p> <p>18 to JJG there --</p> <p>19 A JJG.</p> <p>20 Q What do you think that means, that</p> <p>21 you put that there?</p> <p>22 A I may have owed them something else.</p> <p>23 Q Okay. And if you look at the very</p> <p>24 bottom, you see where you have JJG again?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 271</p> <p>(17:26:36-17:27:50)</p> <p>1 GREFIG</p> <p>2 A Probably means that we don't need it</p> <p>3 now, so I crossed it out --</p> <p>4 Q Then --</p> <p>5 A -- or someone decided that.</p> <p>6 Q Then "Participant notifies," question</p> <p>7 mark?</p> <p>8 A Yes. That's what it says.</p> <p>9 Q Then "Do we need 507," question mark.</p> <p>10 "Yes." It looks -- does that look like</p> <p>11 "disability benefit"?</p> <p>12 A Correct. Yes.</p> <p>13 Q Then "ERFs JJG to review procedures"?</p> <p>14 A Yes.</p> <p>15 Q Then "ER benefit factors apply to</p> <p>16 12/31/95 accrued, and convert CB for CB piece."</p> <p>17 As in cash balance?</p> <p>18 A Cash balance. CB.</p> <p>19 Q Did I -- does that look like you're</p> <p>20 saying convert CB for CB piece?</p> <p>21 A Yes. Correct.</p> <p>22 Q What does that mean?</p> <p>23 A I don't know.</p> <p>24 Q Okay.</p> <p>25 A I don't know.</p>
<p style="text-align: right;">Page 270</p> <p>(17:25:30-17:26:32)</p> <p>1 GREFIG</p> <p>2 Q And it says, "JJG shipped articles,"</p> <p>3 and then it lists some numbers?</p> <p>4 A Yes.</p> <p>5 Q And that means that you -- in all</p> <p>6 likelihood it means that you had made comments</p> <p>7 and sent them off?</p> <p>8 A That's -- yes. That's what it</p> <p>9 appears to be.</p> <p>10 Q Then the rest of it seems to be</p> <p>11 straightforward.</p> <p>12 We've got "Q 50 percent J and S</p> <p>13 qualified joint survivor annuity" underneath</p> <p>14 the --</p> <p>15 A Yes.</p> <p>16 Q -- "417(e) rate."</p> <p>17 A That's a mathematical term. The V</p> <p>18 with the line through it means for all.</p> <p>19 Q For all terms?</p> <p>20 A Terms.</p> <p>21 Q And then it looks like "Regulatory</p> <p>22 language. Do we need now. Yes. Pre 1/1/96</p> <p>23 accrued"?</p> <p>24 A Uh-huh. Yes.</p> <p>25 Q But then there's an X through it?</p>	<p style="text-align: right;">Page 272</p> <p>(17:27:58-17:29:32)</p> <p>1 GREFIG</p> <p>2 Q Do you know what the formula is</p> <p>3 you're working on at the last page concerns?</p> <p>4 I'm not --</p> <p>5 A It looks like ".02 times (P minus S</p> <p>6 minus 5)".</p> <p>7 Q I'm not asking you to read it. I'm</p> <p>8 just asking if looking at it you know what</p> <p>9 you're doing there.</p> <p>10 A No.</p> <p>11 Q Could I have the exhibit back,</p> <p>12 please? Thank you.</p> <p>13 (Exhibit 98, fax dated 8/14/95,</p> <p>14 was marked for identification, as of</p> <p>15 this date.)</p> <p>16 Q 98 is an August 14, '95 e-mail -- I'm</p> <p>17 sorry. Fax from you.</p> <p>18 Initially I guess it looks like it</p> <p>19 was addressed to Rina Zimmerman?</p> <p>20 A Yes.</p> <p>21 Q And that's crossed out, and is that</p> <p>22 your handwriting, "Tom Kiley"?</p> <p>23 A It may be.</p> <p>24 Q Okay. Or somebody else who might</p> <p>25 have assisted you sending this?</p>

<p style="text-align: right;">Page 273</p> <p>(17:29:32-17:30:28)</p> <p>1 GREFIG</p> <p>2 A Yes.</p> <p>3 Q But you signed the fax cover sheet?</p> <p>4 A That's my name. Right.</p> <p>5 Q And it's -- did you type out fax</p> <p>6 cover sheets yourself?</p> <p>7 A If push came to shove, I was capable</p> <p>8 of doing that, yes.</p> <p>9 Q Okay. It's addressed to Rina. It</p> <p>10 says Rina.</p> <p>11 A Yes.</p> <p>12 Q Who's Rina?</p> <p>13 A Rina I believe was in-house counsel.</p> <p>14 Q And what interaction with her did you</p> <p>15 have other than this fax as regards to the</p> <p>16 conversion?</p> <p>17 A I don't remember her interaction.</p> <p>18 Remember, I told you before about Bill Forcht</p> <p>19 and how he was sitting here (indicating) and the</p> <p>20 attorney was sitting there (indicating).</p> <p>21 Q I remember that very well.</p> <p>22 A That's the attorney I was</p> <p>23 referencing. She was in-house counsel.</p> <p>24 Q So she was present for --</p> <p>25 A During that conversation. Yes.</p>	<p style="text-align: right;">Page 275</p> <p>(17:31:30-17:33:06)</p> <p>1 GREFIG</p> <p>2 plan. We need to talk about what optional form</p> <p>3 of benefit will be provided."</p> <p>4 And then you're providing here these</p> <p>5 two definitions. And you see how you're</p> <p>6 providing for the conversion at nine percent and</p> <p>7 applicable mortality?</p> <p>8 A Yes.</p> <p>9 Q And then you're giving a definition</p> <p>10 for converting the account balance to an</p> <p>11 annuity?</p> <p>12 A Right.</p> <p>13 Q And you end by saying, "I've also</p> <p>14 sent this to Tom so we can discuss open issues."</p> <p>15 Right?</p> <p>16 A Right. Yes.</p> <p>17 Q So this further confirms your belief</p> <p>18 that you were providing comments and input on</p> <p>19 the drafting of the plan document?</p> <p>20 A It appears so, yes.</p> <p>21 Q And does reading this jog your memory</p> <p>22 about anything at all?</p> <p>23 A No. It's kind of procedural.</p> <p>24 (Exhibit 99, handwritten notes</p> <p>25 dated 8/15/95, was marked for</p>
<p style="text-align: right;">Page 274</p> <p>(17:30:30-17:31:26)</p> <p>1 GREFIG</p> <p>2 Q So this was the female attorney?</p> <p>3 A Correct. Yes.</p> <p>4 Q And how did she react to his</p> <p>5 snapping?</p> <p>6 A Well, she was a subordinate counsel.</p> <p>7 We all kind of chilled out and shook it off.</p> <p>8 Q Okay.</p> <p>9 A I mean, I followed up with his</p> <p>10 comment. I didn't ignore him. But...</p> <p>11 Q You followed up with it?</p> <p>12 A Well, I responded to him.</p> <p>13 Q By telling --</p> <p>14 A Look, I'm sorry. That's what you</p> <p>15 have to do, but you did ask me the question.</p> <p>16 Q And did he calm down after that?</p> <p>17 A Yes. He chilled out a little bit.</p> <p>18 Q A little bit?</p> <p>19 A Well, it -- it didn't carry on.</p> <p>20 Let's put it that way. We moved on to other</p> <p>21 subjects and other conversation. It wasn't like</p> <p>22 it was --</p> <p>23 Q All right. So you're saying here,</p> <p>24 "Rina, the following two definitions are needed</p> <p>25 for actuarial equivalent in the cash balance</p>	<p style="text-align: right;">Page 276</p> <p>(17:33:08-17:34:32)</p> <p>1 GREFIG</p> <p>2 identification, as of this date.)</p> <p>3 Q 99 are your handwritten notes dated</p> <p>4 August 15, '95, are they not?</p> <p>5 A Yes. This is my handwriting.</p> <p>6 Q Okay. Maybe we could just quickly go</p> <p>7 through and you just confirm for me that I'm</p> <p>8 reading correctly.</p> <p>9 At the top, "Cash-outs. Pre '85 use</p> <p>10 age 1/1/85. Pre '85 rate and test against</p> <p>11 3,500."</p> <p>12 A Yes. That's what it says.</p> <p>13 Q "All others use age at term," meaning</p> <p>14 termination, "and appropriate interest rates age</p> <p>15 to nearest month"?</p> <p>16 A Yes.</p> <p>17 Q Then it says, "204(h) after adoption</p> <p>18 and 15 days before effective date."</p> <p>19 A Yes.</p> <p>20 Q "Cash balance." There's a dollar</p> <p>21 sign. Then it has "1,000 -- 1,000/month"?</p> <p>22 A Correct.</p> <p>23 Q And "\$81,000," and then June is</p> <p>24 crossed out, and then it says May, and then it</p> <p>25 looks like it's 5,000? Is that "5,000," then</p>

<p style="text-align: right;">Page 277</p> <p>(17:34:44-17:35:46)</p> <p>1 GREFIG</p> <p>2 "greater than 1,000 hours"?</p> <p>3 A Less than. Less than.</p> <p>4 Q "Less than 1,000 hours and no break</p> <p>5 in service. No."</p> <p>6 A Correct. That's what it says.</p> <p>7 Q "Compensation credit based on</p> <p>8 completed years of credited" -- CS is</p> <p>9 credited --</p> <p>10 A Credited service.</p> <p>11 Q And -- I'm sorry. "At 1/1 of year."</p> <p>12 A Yes.</p> <p>13 Q Then "Interest credits" -- looks like</p> <p>14 "half a percent"?</p> <p>15 A Correct.</p> <p>16 Q And "June"?</p> <p>17 A No. "Per month."</p> <p>18 Q "Per month. Per month. Simple</p> <p>19 interest as at beginning of year"?</p> <p>20 A "On."</p> <p>21 Q "On beginning of year account</p> <p>22 balance"?</p> <p>23 A Correct.</p> <p>24 Q Okay. "Compensation credit accrues</p> <p>25 throughout year but is credited to the account</p>	<p style="text-align: right;">Page 279</p> <p>(17:37:14-17:38:48)</p> <p>1 GREFIG</p> <p>2 Q What are those -- I'm sorry. What is</p> <p>3 valuation tape that you're referencing?</p> <p>4 A We used to get a tape from Woolworth</p> <p>5 that contained all of the participant records,</p> <p>6 compensation, records for the year, date of</p> <p>7 birth, date of employment, perhaps Social</p> <p>8 Security number, other -- an employee number,</p> <p>9 but that's what we referred to as the valuation</p> <p>10 tape.</p> <p>11 Q And that was for the purposes of?</p> <p>12 A The valuation.</p> <p>13 Q At the bottom of the page it says,</p> <p>14 "Illustration." Then it appears to have</p> <p>15 someone's name there?</p> <p>16 A Linda Ine.</p> <p>17 Q Who is that?</p> <p>18 A My recollection is that Linda Ine</p> <p>19 worked at Camp Hill, Pennsylvania. She may have</p> <p>20 been the source to which Woolworth New York went</p> <p>21 to get the valuation tapes cut.</p> <p>22 Q And what is Camp Hill, Pennsylvania</p> <p>23 to Woolworth?</p> <p>24 A Camp Hill to me was like the cloud.</p> <p>25 They -- they were involved in -- they didn't</p>
<p style="text-align: right;">Page 278</p> <p>(17:35:48-17:37:14)</p> <p>1 GREFIG</p> <p>2 at 12/31"?</p> <p>3 A Correct.</p> <p>4 Q "TV." That means terminated vesteds.</p> <p>5 "Who defer give greater of annuity giving</p> <p>6 interest at term or interest at retirement"?</p> <p>7 A Correct.</p> <p>8 Q What does that mean?</p> <p>9 A I don't know what this means within</p> <p>10 the context of what's being done, but it</p> <p>11 suggests that the interest rate at the date of</p> <p>12 termination -- the greater of the interest rate</p> <p>13 at date of termination or at retirement will be</p> <p>14 used for whatever calculation is being addressed</p> <p>15 here.</p> <p>16 Q And the next page says, "Tape fields.</p> <p>17 We get valuation tape." Is that right?</p> <p>18 A Yes.</p> <p>19 Q Then it says, "We keep 12/31/95</p> <p>20 approved benefit. Calculate 12/31/95 initial</p> <p>21 cash balance"?</p> <p>22 A Correct.</p> <p>23 Q Then "Monthly at compensation credit</p> <p>24 interest credit"?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 280</p> <p>(17:38:52-17:39:54)</p> <p>1 GREFIG</p> <p>2 have -- that's where their computers were, I</p> <p>3 guess is the way to express it.</p> <p>4 They were an administrative center, I</p> <p>5 believe. That's not -- I wouldn't take that as</p> <p>6 fact, but that was the impression I had from</p> <p>7 working with Woolworth.</p> <p>8 Q Did you have any dealings with Linda</p> <p>9 Ine?</p> <p>10 A No, not other than however she got</p> <p>11 involved with what's going on here, or if there</p> <p>12 was an issue about data tapes, and one of my</p> <p>13 staff would probably be dealing with her.</p> <p>14 Q Do you remember speaking with her</p> <p>15 ever? Not necessarily the content, just --</p> <p>16 A Yes. I mean, Linda Ine was not, you</p> <p>17 know, someone in the wilderness. I had phone</p> <p>18 conversations with her.</p> <p>19 Q And what would the subject matter</p> <p>20 have been?</p> <p>21 A I don't know specifically. More than</p> <p>22 likely it had to do with valuation tapes,</p> <p>23 because that's the only time I have a</p> <p>24 recollection that her name ever came up.</p> <p>25 Q Were you ever in a meeting with her?</p>

<p style="text-align: right;">Page 281</p> <p>(17:39:56-17:41:34)</p> <p>1 GREFIG</p> <p>2 A I don't remember.</p> <p>3 Q Would you ever have occasion to</p> <p>4 explain the way the conversion worked to her?</p> <p>5 A No. No. Not that -- not that I</p> <p>6 recall.</p> <p>7 Q How about Marion Derham?</p> <p>8 A Marion was an assistant to Tom and/or</p> <p>9 Carol Kanowicz.</p> <p>10 Q And did you have any interaction with</p> <p>11 her?</p> <p>12 A Not on an ongoing basis. What sticks</p> <p>13 in my mind, again under unusual circumstances, I</p> <p>14 found out that she lived five miles north of me</p> <p>15 in Ossining, when I was living in Ossining at</p> <p>16 the time, so we commuted on the same railroad,</p> <p>17 not -- didn't take the same train.</p> <p>18 MS. WALWORTH: I want to ask</p> <p>19 you for scheduling purposes what you</p> <p>20 anticipate?</p> <p>21 MR. GOTTESDIENER:</p> <p>22 Continuing -- you want to take a</p> <p>23 break?</p> <p>24 MS. WALWORTH: No. I mean, do</p> <p>25 you have any idea how much more time?</p>	<p style="text-align: right;">Page 283</p> <p>(17:52:50-17:54:14)</p> <p>1 GREFIG</p> <p>2 change based upon what you were seeing occur.</p> <p>3 Do you recall that?</p> <p>4 A Yes.</p> <p>5 MR. RUMELD: Objection to form.</p> <p>6 Q There was some issue about how all</p> <p>7 the numbers lined up. Showing you and I'm</p> <p>8 marking as Exhibit 100.</p> <p>9 (Exhibit 100, extract of 1998</p> <p>10 valuation, was marked for</p> <p>11 identification, as of this date.)</p> <p>12 Q This is an extract of the 1998</p> <p>13 valuation.</p> <p>14 And looking at Page 34, the second</p> <p>15 page, you see that there were 4,164 people who</p> <p>16 terminated during 1997 who were cashed out?</p> <p>17 A Yes.</p> <p>18 Q Another 594 who were previously</p> <p>19 terminated who took lump sums?</p> <p>20 A Yes.</p> <p>21 Q And you see at the top it has actives</p> <p>22 at the beginning of the year 19,551?</p> <p>23 A Yes.</p> <p>24 Q And so of those people at the</p> <p>25 beginning of the year, about 20 to 25 percent of</p>
<p style="text-align: right;">Page 282</p> <p>(17:41:36-17:52:46)</p> <p>1 GREFIG</p> <p>2 MR. GOTTESDIENER: Can we</p> <p>3 discuss this off the record?</p> <p>4 MS. WALWORTH: Sure. Of</p> <p>5 course.</p> <p>6 MR. GOTTESDIENER: Does anybody</p> <p>7 need a break now?</p> <p>8 MS. WALWORTH: We're off the</p> <p>9 record.</p> <p>10 MR. GOTTESDIENER: We're off</p> <p>11 the record? Okay. Let's go off the</p> <p>12 record.</p> <p>13 THE VIDEOGRAPHER: This</p> <p>14 concludes Tape Number 5. The time is</p> <p>15 5:39 p.m. We're off the record.</p> <p>16 (Discussion off the record)</p> <p>17 THE VIDEOGRAPHER: This begins</p> <p>18 Tape Number 6. The time is 5:49 p.m.</p> <p>19 We're back on the record.</p> <p>20 CONTINUED DIRECT EXAMINATION BY MR.</p> <p>21 GOTTESDIENER:</p> <p>22 Q Remember before lunch we were talking</p> <p>23 about your assumptions that everybody was going</p> <p>24 to be taking annuities and the large number of</p> <p>25 terminations, and how your assumptions didn't</p>	<p style="text-align: right;">Page 284</p> <p>(17:54:18-17:55:18)</p> <p>1 GREFIG</p> <p>2 them took lump sums?</p> <p>3 MR. RUMELD: I object to the</p> <p>4 form.</p> <p>5 A Okay.</p> <p>6 Q And did you -- did you discuss the</p> <p>7 anticipation of people taking lump sums with</p> <p>8 Woolworth during the design process?</p> <p>9 A I don't remember, but that piece of</p> <p>10 paper you showed me before, where I read off the</p> <p>11 termination rates, I said that this didn't apply</p> <p>12 to Woolworth, it must have been another plan.</p> <p>13 So yes. There must have been some conversation</p> <p>14 about utilization of lump sums.</p> <p>15 Q Because?</p> <p>16 A Because I had a piece of information</p> <p>17 that dealt with that issue.</p> <p>18 Q But why would it be important to</p> <p>19 discuss that with the sponsor?</p> <p>20 MR. RUMELD: I object to the</p> <p>21 form.</p> <p>22 A Well, I just think this warrants</p> <p>23 discussion.</p> <p>24 Q Because?</p> <p>25 A To demonstrate that you're -- from an</p>

<p style="text-align: right;">Page 285</p> <p>(17:55:22-17:56:44)</p> <p>1 GREFIG</p> <p>2 actuarial standpoint that you're paying</p> <p>3 attention to changes in the population.</p> <p>4 And again, as I had mentioned</p> <p>5 earlier, the issue is not so much the current</p> <p>6 level of terminations, but whether or not that's</p> <p>7 expected to be a regular part of the plan</p> <p>8 demographics, has your business changed to the</p> <p>9 point where you expect that higher level of</p> <p>10 termination year in and year out.</p> <p>11 I mean, there was in the -- in the</p> <p>12 presentations that we looked at, there is talk</p> <p>13 about a modern work force, more mobile.</p> <p>14 Remember the piece that we looked at</p> <p>15 where my arrow pointed down, therefore more TVs.</p> <p>16 So that warrants discussion with the client, is</p> <p>17 it abnormal, are you going through a period of</p> <p>18 time, or is this going to become a permanent</p> <p>19 part of your -- your work force turnover.</p> <p>20 Q Well, the client is -- you're also</p> <p>21 seeing that there's 6,500 other terminations</p> <p>22 during the year, right? Above cash-outs?</p> <p>23 A 6,000 -- right. Between vested</p> <p>24 terminations and -- yes. Right.</p> <p>25 Q So essentially half of the active</p>	<p style="text-align: right;">Page 287</p> <p>(17:57:54-17:58:40)</p> <p>1 GREFIG</p> <p>2 work force, that they terminate employment.</p> <p>3 They move on to other employment. They could</p> <p>4 roll these lump sums over.</p> <p>5 Q Well, they could --</p> <p>6 A Now you've got -- and you don't have</p> <p>7 to pay PBGC premiums for terminated vested</p> <p>8 employees who have vested out of the plan.</p> <p>9 Q But they had a cash balance plan</p> <p>10 without offering a lump sum option.</p> <p>11 A That's true.</p> <p>12 Q So why wasn't that done?</p> <p>13 MR. RUMELD: I object to the</p> <p>14 form.</p> <p>15 A Cash balance plan without a lump sum</p> <p>16 option? A cash balance plan?</p> <p>17 Q You just said that's true.</p> <p>18 A Well --</p> <p>19 Q Are you doubting your answer?</p> <p>20 A Yes. I doubt myself. Yes.</p> <p>21 Q There was -- this was -- came up in</p> <p>22 your survey earlier of your cash balance</p> <p>23 network.</p> <p>24 A Yeah.</p> <p>25 Q Of course you can have a plan that</p>
<p style="text-align: right;">Page 286</p> <p>(17:56:48-17:57:50)</p> <p>1 GREFIG</p> <p>2 participants are leaving that year?</p> <p>3 A In that year, right.</p> <p>4 Q So you must have discussed this, the</p> <p>5 decline in the number of participants with</p> <p>6 Woolworth?</p> <p>7 MR. RUMELD: I object to the</p> <p>8 form.</p> <p>9 A Probably, yes.</p> <p>10 Q And considering that they were adding</p> <p>11 a lump sum option, were they hoping for a high</p> <p>12 level of lump sums?</p> <p>13 MR. RUMELD: I object to the</p> <p>14 form.</p> <p>15 A I wouldn't think so. Lump sums are</p> <p>16 far more expensive to the plan.</p> <p>17 Q Why add the lump sum option?</p> <p>18 MR. RUMELD: I object to the</p> <p>19 form.</p> <p>20 A Because that's part of the plan</p> <p>21 design that there were examining.</p> <p>22 Q But why add that plan design feature?</p> <p>23 A Because they thought they had a more</p> <p>24 mobile work force and that this would -- this</p> <p>25 would aid them in providing benefits to that</p>	<p style="text-align: right;">Page 288</p> <p>(17:58:42-17:59:46)</p> <p>1 GREFIG</p> <p>2 doesn't offer lump sums, right? There's no</p> <p>3 requirement to offer a lump sum?</p> <p>4 A No.</p> <p>5 Q Nothing about a cash balance plan</p> <p>6 that --</p> <p>7 A Not that I recall. Not that I</p> <p>8 recall.</p> <p>9 Q So you did an analysis we saw earlier</p> <p>10 on the cost savings of early retirement subsidy</p> <p>11 if Woolworth went to a cash balance plan and</p> <p>12 adding a lump sum feature, right?</p> <p>13 A No. Backtrack on that. Cost savings</p> <p>14 if they went to a cash balance plan?</p> <p>15 Q Yes.</p> <p>16 A And did what?</p> <p>17 Q And had the lump sum feature, where</p> <p>18 people were taking lump sums, and therefore not</p> <p>19 obtaining the early retirement subsidy annuity.</p> <p>20 A We looked at something that looked at</p> <p>21 the cost of the early retirement subsidy in the</p> <p>22 DB plan, but I don't recall showing a reduction</p> <p>23 in cost by allowing a lump sum, because a lump</p> <p>24 sum is going to go out at a much lower interest</p> <p>25 rate than the investment return assumption rate,</p>

<p style="text-align: right;">Page 289</p> <p>(17:59:50-18:00:52)</p> <p>1 GREFIG</p> <p>2 so it has to generate an actuarial -- lump sum</p> <p>3 has to generate an actuarial loss.</p> <p>4 Q Remember we looked at that bell</p> <p>5 curve?</p> <p>6 A That was benefit disbursement.</p> <p>7 Q But you said that -- you did</p> <p>8 acknowledge those are lump sums?</p> <p>9 A Correct.</p> <p>10 Q And you acknowledged at the end of</p> <p>11 the document there was a \$2 million savings.</p> <p>12 MR. RUMELD: I object to the</p> <p>13 form.</p> <p>14 A No. I think the \$2 million -- dollar</p> <p>15 savings was to remove -- I'm sorry. The</p> <p>16 \$2 million savings was to remove the early</p> <p>17 retirement subsidy from the existing DB plan.</p> <p>18 And the fact that that bell-shaped</p> <p>19 curve, which shows the lump sums far in excess</p> <p>20 of the benefit disbursements that trickle along</p> <p>21 the bottom of the curve, is one illustration</p> <p>22 that lump sums are far more expensive to the</p> <p>23 plan than are annuity payments, because you're</p> <p>24 taking out a greater sum of money in a shorter</p> <p>25 period of time, so you lose the benefit of the</p>	<p style="text-align: right;">Page 291</p> <p>(18:01:58-18:02:56)</p> <p>1 GREFIG</p> <p>2 design or acknowledging in that one --</p> <p>3 A In that one -- that one --</p> <p>4 Q -- set of handwritten notes.</p> <p>5 A One set of illustrations.</p> <p>6 Q And my question was, was the cost of</p> <p>7 providing lump sums a consideration in the</p> <p>8 design of the new plan?</p> <p>9 A I would say only to the extent they</p> <p>10 considered it a more modern plan. But...</p> <p>11 Q No. Cost.</p> <p>12 A I don't know whether it was a</p> <p>13 consideration or an awareness. They're</p> <p>14 certainly aware that lump sums cost money.</p> <p>15 Q You said that -- you actually said</p> <p>16 that --</p> <p>17 A Are more costly than annuity</p> <p>18 payments.</p> <p>19 Q Well, that does somewhat depend on</p> <p>20 where interest rates are.</p> <p>21 MR. RUMELD: I object to the</p> <p>22 form.</p> <p>23 A During the actuarial valuation</p> <p>24 methods and assumptions that we used, lump sums</p> <p>25 generate an actuarial loss to the plan.</p>
<p style="text-align: right;">Page 290</p> <p>(18:00:56-18:01:56)</p> <p>1 GREFIG</p> <p>2 interest discount.</p> <p>3 Q Was there an assumption made by</p> <p>4 yourself during the planning process as to where</p> <p>5 the GATT rate, PBGC, whatever applicable</p> <p>6 interest rate was for discounting, where that</p> <p>7 was going to go?</p> <p>8 MR. RUMELD: I object to the</p> <p>9 form.</p> <p>10 A For valuation purposes?</p> <p>11 Q For design purposes.</p> <p>12 A Well, it's one indication of it in</p> <p>13 here where the GATT rate was pegged at eight</p> <p>14 percent, but that was mid to early year, and you</p> <p>15 made the comment before that by the end of the</p> <p>16 year that rate had tanked.</p> <p>17 So I think we were just being</p> <p>18 responsive to the current -- the rate that</p> <p>19 existed at that time, the time the illustration</p> <p>20 was put together.</p> <p>21 Q When you were say we are being</p> <p>22 responsive, what do you mean?</p> <p>23 A Acknowledging the fact that the GATT</p> <p>24 rate was changing.</p> <p>25 Q I'm asking acknowledging in the</p>	<p style="text-align: right;">Page 292</p> <p>(18:02:58-18:04:02)</p> <p>1 GREFIG</p> <p>2 Q Did you -- you must have quantified</p> <p>3 that.</p> <p>4 A I don't recall. Unless it's in one</p> <p>5 of those prior illustrations that we looked at,</p> <p>6 but I don't remember that.</p> <p>7 Q Well, didn't you have to quantify</p> <p>8 that?</p> <p>9 A Yes. I'm saying I don't recall it,</p> <p>10 but in all likelihood that was one of the things</p> <p>11 that we discussed, among all of the other</p> <p>12 considerations involved in a cash balance plan.</p> <p>13 Q But you don't -- I mean, where would</p> <p>14 we find that?</p> <p>15 A The cost of the lump sum?</p> <p>16 Q Yes. The actuarial loss you're</p> <p>17 saying you quantified.</p> <p>18 A Was there a set of calculations along</p> <p>19 with that graph that showed the bell curve on</p> <p>20 it, the bell curve, and then the squiggly line</p> <p>21 on the bottom? Were there calculations stapled</p> <p>22 to that?</p> <p>23 Q If it's not there, where would it be?</p> <p>24 A Some other piece of paper. Some</p> <p>25 other analysis.</p>

<p style="text-align: right;">Page 293</p> <p>(18:04:06-18:05:36)</p> <p>1 GREFIG</p> <p>2 Q The lump sum is cheaper than the</p> <p>3 subsidized early retirement annuity though,</p> <p>4 right?</p> <p>5 MR. RUMELD: I object to the</p> <p>6 form.</p> <p>7 A The lump sum is cheaper than the</p> <p>8 subsidized early retirement benefit, only</p> <p>9 because the subsidy is not captured in the lump</p> <p>10 sum payment.</p> <p>11 In other words, if someone takes a</p> <p>12 lump sum of early retirement, the lump sum is</p> <p>13 based upon the accrued benefit, which is payable</p> <p>14 at normal retirement age and doesn't capture the</p> <p>15 subsidy, so the lump sum is going to be less</p> <p>16 expensive on an ongoing basis, less expensive</p> <p>17 than --</p> <p>18 Q Than the early retirement subsidy?</p> <p>19 A Right.</p> <p>20 Q And you obviously communicated that</p> <p>21 to Mr. Kiley and the people at Woolworth?</p> <p>22 MR. RUMELD: I object to the</p> <p>23 form.</p> <p>24 A In all probability, yes, but I don't</p> <p>25 recall discussion on that issue.</p>	<p style="text-align: right;">Page 295</p> <p>(18:06:20-18:07:28)</p> <p>1 GREFIG</p> <p>2 the early retirement subsidy, right?</p> <p>3 MR. RUMELD: I object to the</p> <p>4 form.</p> <p>5 A Yeah, because, you know, this whole</p> <p>6 issue that we're talking about, that the --</p> <p>7 calculate that the accrued benefit by definition</p> <p>8 doesn't -- does not include early retirement</p> <p>9 subsidies obviously would have been discussed.</p> <p>10 Q And given these numbers that we're</p> <p>11 seeing about the number of these cash-outs,</p> <p>12 wouldn't this necessarily have the greatest</p> <p>13 concern about the accuracy of the assumption</p> <p>14 that you made of the hundred percent annuities?</p> <p>15 MR. RUMELD: I object to the</p> <p>16 form.</p> <p>17 A It would have raised -- it would have</p> <p>18 raised awareness of a need to look further at</p> <p>19 the actuarial assumptions.</p> <p>20 But to modify your assumption after</p> <p>21 one year's experience, given what you've</p> <p>22 indicated to me was going on with restructuring</p> <p>23 that you pointed out in one of the document,</p> <p>24 restructuring must have been of the company,</p> <p>25 doesn't make -- we revise the assumption to</p>
<p style="text-align: right;">Page 294</p> <p>(18:05:38-18:06:16)</p> <p>1 GREFIG</p> <p>2 Q But -- I mean, this was a major</p> <p>3 feature of the plan to add a lump sum, and you</p> <p>4 do agree with that?</p> <p>5 A Uh-huh.</p> <p>6 Q You have to say yes or no.</p> <p>7 A Yes. I'm sorry. Yes.</p> <p>8 Q You learned months earlier that when</p> <p>9 people were offered lump sums in your survey,</p> <p>10 people took lump sums?</p> <p>11 MR. RUMELD: Objection to the</p> <p>12 form.</p> <p>13 A Yes.</p> <p>14 Q You learned that too, right?</p> <p>15 A Yes.</p> <p>16 Q And you communicated that to</p> <p>17 Woolworth, right?</p> <p>18 MR. RUMELD: I object to the</p> <p>19 form.</p> <p>20 A Yes.</p> <p>21 Q Okay. So the -- and you knew that --</p> <p>22 withdrawn.</p> <p>23 And you knew and communicated in your</p> <p>24 discussions with Woolworth that if people took</p> <p>25 the lump sum they would not get the subsidy in</p>	<p style="text-align: right;">Page 296</p> <p>(18:07:30-18:08:36)</p> <p>1 GREFIG</p> <p>2 reflect that the resulting assumptions are no</p> <p>3 more accurate than the assumptions I had</p> <p>4 previously.</p> <p>5 Q So that's --</p> <p>6 A Because we don't know what -- we need</p> <p>7 a period of time of stability and a period of</p> <p>8 time where we can accumulate the data, so that</p> <p>9 it -- the -- the data over that period of time</p> <p>10 is more reflective of the company's true</p> <p>11 operations.</p> <p>12 Q Well, if there were a new plan and</p> <p>13 you knew what you knew about the likelihood of</p> <p>14 people taking up to a hundred percent lump sums,</p> <p>15 would you have included an assumption that said</p> <p>16 there's a hundred percent assumption that they</p> <p>17 take annuities?</p> <p>18 MR. RUMELD: I object to the</p> <p>19 form.</p> <p>20 A If it was a new plan.</p> <p>21 Q Cash balance plan starting from</p> <p>22 scratch, lump sum option, annuity option. And</p> <p>23 you knew what you knew from the investigation</p> <p>24 you took.</p> <p>25 You would have included a lump sum</p>

<p style="text-align: right;">Page 297</p> <p>(18:08:40-18:09:30)</p> <p>1 GREFIG</p> <p>2 assumption, wouldn't you?</p> <p>3 MR. RUMELD: I object to the</p> <p>4 form.</p> <p>5 A There's a likelihood that it would</p> <p>6 have included an assumption about lump sums, but</p> <p>7 again --</p> <p>8 Q How is this different then than --</p> <p>9 you know, when this is a new provision and it's</p> <p>10 a converted plan?</p> <p>11 A Maybe because there's other turmoil</p> <p>12 going on at the company.</p> <p>13 Q What do you mean by that?</p> <p>14 A Well, the document that we looked at</p> <p>15 that referenced restructuring and cost of a plan</p> <p>16 after restructuring, apparently they terminated</p> <p>17 some divisions, and you just pointed out to me</p> <p>18 that they had a significant reduction in the</p> <p>19 work force.</p> <p>20 Q But that would just make it all the</p> <p>21 more important to include a lump sum assumption.</p> <p>22 A No. And on what basis do you select</p> <p>23 that assumption?</p> <p>24 Q Based on experience that you've --</p> <p>25 A One year's experience?</p>	<p style="text-align: right;">Page 299</p> <p>(18:10:28-18:11:16)</p> <p>1 GREFIG</p> <p>2 Q You understood there was a high</p> <p>3 likelihood --</p> <p>4 A It was a likelihood --</p> <p>5 MS. WALWORTH: I would ask that</p> <p>6 you please let each other finish.</p> <p>7 Thank you.</p> <p>8 Q You expected -- we have your</p> <p>9 testimony in response to several different</p> <p>10 questions.</p> <p>11 You expected a high number of lump</p> <p>12 sums even before the plan went into operation;</p> <p>13 isn't that correct?</p> <p>14 MR. RUMELD: I object to the</p> <p>15 form.</p> <p>16 A I don't -- I don't recall testifying</p> <p>17 to that. No.</p> <p>18 Q How about you knew that there was --</p> <p>19 based on what you've seen, that there was a</p> <p>20 likelihood of a high number of lump sums.</p> <p>21 A Correct.</p> <p>22 Q And then there was plan experience.</p> <p>23 A Correct.</p> <p>24 Q That confirmed that assumption?</p> <p>25 A That expectation, right.</p>
<p style="text-align: right;">Page 298</p> <p>(18:09:30-18:10:28)</p> <p>1 GREFIG</p> <p>2 Q Okay. So then what about two years'</p> <p>3 experience?</p> <p>4 MR. RUMELD: Objection to form.</p> <p>5 A Three years' experience. Now,</p> <p>6 depending upon what happened after two years, I</p> <p>7 might push to introduce an assumption, three</p> <p>8 years' experience, watching what's going on,</p> <p>9 seeing that there's any stability coming from</p> <p>10 the demographics from one year to the next.</p> <p>11 Then we start to talk about introducing a lump</p> <p>12 sum option assumption. Now --</p> <p>13 Q I'm sorry. I'm just not following,</p> <p>14 because you said that --</p> <p>15 A Do you have the -- you had the 1/1/99</p> <p>16 valuation report, didn't you?</p> <p>17 Q Yes. But I'm asking a question,</p> <p>18 which is you knew from your investigations</p> <p>19 before the plan was put into operation that the</p> <p>20 likelihood was of a hundred percent lump sums.</p> <p>21 A No.</p> <p>22 MR. RUMELD: I object to the</p> <p>23 form.</p> <p>24 A Not a likelihood of a hundred percent</p> <p>25 of lump sum.</p>	<p style="text-align: right;">Page 300</p> <p>(18:11:18-18:12:30)</p> <p>1 GREFIG</p> <p>2 Q And that was already confirmed in the</p> <p>3 first year, and it was reconfirmed in the second</p> <p>4 year?</p> <p>5 MR. RUMELD: I object to the</p> <p>6 form.</p> <p>7 A Was it in the second year? I</p> <p>8 don't -- I don't recall that we had two years of</p> <p>9 experience of significant population declines.</p> <p>10 We had that one year that you were</p> <p>11 addressing, where there was a 50 percent</p> <p>12 reduction of population. I don't know how many</p> <p>13 years running.</p> <p>14 Q But you have multiple years where</p> <p>15 we've seen that there's a high number of</p> <p>16 terminations?</p> <p>17 A Yes. We saw that one year. That's</p> <p>18 true.</p> <p>19 Q And how many years experience do you</p> <p>20 need?</p> <p>21 MR. RUMELD: Objection to form.</p> <p>22 A I would wait three years or more.</p> <p>23 Q The bottom line was that after</p> <p>24 significant terminations in every year from '94</p> <p>25 through '97, four years, that that was a</p>

<p style="text-align: right;">Page 301</p> <p>(18:12:34-18:13:28)</p> <p>1 GREFIG</p> <p>2 significant number of years?</p> <p>3 MR. RUMELD: I object to the</p> <p>4 form.</p> <p>5 A But '94 and '95 there weren't any</p> <p>6 lump sums paid.</p> <p>7 Q There were significant terminations?</p> <p>8 A Okay. Significant terminations.</p> <p>9 Okay.</p> <p>10 Q You saw that there were significant</p> <p>11 terminations, and you knew or expected</p> <p>12 significant lump sums of people who terminated?</p> <p>13 A Uh-huh.</p> <p>14 Q So at what point do you reconsider</p> <p>15 your assumptions?</p> <p>16 MR. RUMELD: I object to form.</p> <p>17 A After I've had a few more years of</p> <p>18 observing what's happening with the work force,</p> <p>19 and determining whether or not these are</p> <p>20 abnormal events that are going to occur in a</p> <p>21 short period of time, or whether they are truly</p> <p>22 going to become characteristics of the plan</p> <p>23 demographics.</p> <p>24 Q But --</p> <p>25 A Now, if these terminations are the</p>	<p style="text-align: right;">Page 303</p> <p>(18:14:44-18:15:56)</p> <p>1 GREFIG</p> <p>2 Q I'm not finished with my question.</p> <p>3 But you were aware of all that at the time?</p> <p>4 A Yes.</p> <p>5 Q And the people at Foot Locker --</p> <p>6 sorry. Woolworth. Withdrawn.</p> <p>7 The information that you had, you</p> <p>8 don't have any reason to believe that we've been</p> <p>9 discussing here about what your expectations</p> <p>10 were, you don't have any reason to believe that</p> <p>11 you kept that to yourself and didn't communicate</p> <p>12 that to Foot Locker?</p> <p>13 A No. I have no expectations.</p> <p>14 Remember, we're talking about the funding</p> <p>15 valuation here.</p> <p>16 Amortization of gains and losses</p> <p>17 under -- under ERISA back then, I think they</p> <p>18 had -- they had a five-year amortization.</p> <p>19 Q Exhibit 101 is your e-mail to Jim</p> <p>20 Cassidy.</p> <p>21 (Exhibit 101, e-mail, was</p> <p>22 marked for identification, as of this</p> <p>23 date.)</p> <p>24 Q As well as some other folks, in which</p> <p>25 you say, September 15, 1995, "I talked to Marion</p>
<p style="text-align: right;">Page 302</p> <p>(18:13:30-18:14:44)</p> <p>1 GREFIG</p> <p>2 result of restructuring, and I walk in with an</p> <p>3 assumption that we've got a hundred percent lump</p> <p>4 sum election, that assumption is no more valid</p> <p>5 than no assumption at all. The presence of an</p> <p>6 assumption doesn't make it right.</p> <p>7 Q You discussed your assumptions with</p> <p>8 Mr. Kiley?</p> <p>9 MR. RUMELD: I object to the</p> <p>10 form.</p> <p>11 A I would have expected that I would</p> <p>12 have, yes.</p> <p>13 Q And you understood that the company</p> <p>14 at the time was undergoing some significant</p> <p>15 financial difficulty?</p> <p>16 A Based upon the information, yes. I</p> <p>17 guess I was aware of that.</p> <p>18 Q And that the company was a</p> <p>19 publicly-traded company?</p> <p>20 A Yes.</p> <p>21 Q And that there were issues regarding</p> <p>22 the way the company's books were accounting for</p> <p>23 liabilities?</p> <p>24 A Now we're on to a different subset of</p> <p>25 assumptions.</p>	<p style="text-align: right;">Page 304</p> <p>(18:16:02-18:17:08)</p> <p>1 GREFIG</p> <p>2 Derham at Woolworth this morning.</p> <p>3 "I told her we could deliver a</p> <p>4 statement tape by the end of the month or the</p> <p>5 first week in October. That leaves them with</p> <p>6 six weeks until the middle of November.</p> <p>7 "I reminded her that I was making</p> <p>8 this commitment without knowledge what their</p> <p>9 statement would contain, but with the knowledge</p> <p>10 that there was a finite amount of information to</p> <p>11 be prepared, projected benefits, optional forms.</p> <p>12 "In addition -- in addition to the</p> <p>13 usual projected benefits under the current plan</p> <p>14 formula and the CB formula" -- that means cash</p> <p>15 balance formula.</p> <p>16 A Right.</p> <p>17 Q -- "we are to calculate the amount</p> <p>18 that needs to be deferred into the K plan" --</p> <p>19 and that's a reference to the new 401(k) plan?</p> <p>20 A I -- yes.</p> <p>21 Q -- "by those over age 50 in order for</p> <p>22 them to have total income from both plans equal</p> <p>23 to what the current formula produces. Note,</p> <p>24 this ignores the fact that the current formula</p> <p>25 is inadequate." You wrote that, right?</p>

<p style="text-align: right;">Page 305</p> <p>(18:17:12-18:18:14)</p> <p>1 GREFIG</p> <p>2 A Yes.</p> <p>3 Q What did you mean by the current</p> <p>4 formula is inadequate?</p> <p>5 A The -- we looked at those replacement</p> <p>6 ratios before.</p> <p>7 Q If you could just testify without --</p> <p>8 A What do I mean? The benefit -- that</p> <p>9 the benefit form -- the current benefit formula</p> <p>10 doesn't produce target replacement ratios.</p> <p>11 Q Even prior to the change to cash</p> <p>12 balance?</p> <p>13 A Correct.</p> <p>14 Q Which you understood you testified</p> <p>15 long ago deposition-wise was going to reduce the</p> <p>16 rate of benefit accrual in the future?</p> <p>17 A Right.</p> <p>18 MR. RUMELD: I object to the</p> <p>19 form.</p> <p>20 Q And you made sure, because you were</p> <p>21 doing your job, to communicate very clearly to</p> <p>22 Tom Kiley and people at Woolworth that according</p> <p>23 to those replacement ratios, that the current</p> <p>24 formula was already inadequate?</p> <p>25 MR. RUMELD: I object to the</p>	<p style="text-align: right;">Page 307</p> <p>(18:20:20-18:22:26)</p> <p>1 GREFIG</p> <p>2 And then this appears -- we're</p> <p>3 showing the cash balance at 65 and expressing</p> <p>4 that as a multiple of pay at 65. Is that right?</p> <p>5 Right.</p> <p>6 So cash balance as shown on the cash</p> <p>7 balance column is -- is expressed as a multiple</p> <p>8 of cash balance, as a multiple of pay as the pay</p> <p>9 at 65. Then according to the cover memo -- I</p> <p>10 don't know what the final column is.</p> <p>11 Q Exhibit 103.</p> <p>12 (Exhibit 103, handwritten notes</p> <p>13 dated 12/1/95, was marked for</p> <p>14 identification, as of this date.)</p> <p>15 Q These are also handwritten notes that</p> <p>16 you made, dated December 1, 1995; is that</p> <p>17 correct?</p> <p>18 A Yes.</p> <p>19 Q Those presentations that we went</p> <p>20 through, where there were a number of back and</p> <p>21 forths -- I'll take that.</p> <p>22 You understood that those</p> <p>23 presentations were fielding ultimately to be</p> <p>24 presented to the board of directors of</p> <p>25 Woolworth?</p>
<p style="text-align: right;">Page 306</p> <p>(18:18:14-18:20:06)</p> <p>1 GREFIG</p> <p>2 form.</p> <p>3 A Yes. Probably. Yes. Probably.</p> <p>4 Q Do you have any doubt? Any reason to</p> <p>5 doubt?</p> <p>6 A No.</p> <p>7 Q 102.</p> <p>8 (Exhibit 102, fax dated</p> <p>9 10/13/95, was marked for</p> <p>10 identification, as of this date.)</p> <p>11 Q Is your fax to Tom Kiley, October 13,</p> <p>12 1995, stating "Here is a summary of the age 65</p> <p>13 benefits under the career average plan and the</p> <p>14 cash balance plan with and without salary</p> <p>15 projection." Is that correct?</p> <p>16 A Yes.</p> <p>17 Q And what is it that you mean by that?</p> <p>18 A Okay. We've taken real or</p> <p>19 hypothetical people with the stated age of</p> <p>20 service, the stated salary scale, and calculated</p> <p>21 the age 65 annuity under the current plan, and</p> <p>22 then expressed it as a percent of final pay, and</p> <p>23 calculated the age 65 annuity under the cash</p> <p>24 balance plan and expressed it as a percent of</p> <p>25 final pay.</p>	<p style="text-align: right;">Page 308</p> <p>(18:22:26-18:23:54)</p> <p>1 GREFIG</p> <p>2 MR. RUMELD: I object to the</p> <p>3 form.</p> <p>4 A They would be presented up the line.</p> <p>5 I don't know that -- the board of directors</p> <p>6 makes that decision probably, but that --</p> <p>7 usually in a company there's a benefits</p> <p>8 committee.</p> <p>9 And I don't know whether Woolworth</p> <p>10 had one, so maybe this was being prepared for</p> <p>11 the board. Maybe it was being prepared for</p> <p>12 another group of people.</p> <p>13 Q Based on what we've seen so far,</p> <p>14 you're pretty clear now that at the time the</p> <p>15 design was being considered and finalized, that</p> <p>16 you understood and communicated to Woolworth</p> <p>17 that there was this wear-away effect, that could</p> <p>18 mean for a number of participants that there</p> <p>19 would be a period of years during which they</p> <p>20 would actually never lose anything, but they</p> <p>21 would not add new benefits to their accrued</p> <p>22 benefit?</p> <p>23 MR. RUMELD: I object to the</p> <p>24 form.</p> <p>25 A No new annuity benefits, yes.</p>

<p style="text-align: right;">Page 309</p> <p>(18:23:58-18:25:12)</p> <p>1 GREFIG</p> <p>2 Q And depending on where interest rates</p> <p>3 were, for many participants that could also mean</p> <p>4 no lump sum new benefits either?</p> <p>5 MR. RUMELD: I object to the</p> <p>6 form.</p> <p>7 A That's a true -- that is a true</p> <p>8 possibility, but the risk is the opposite risk.</p> <p>9 I mean, you're sitting with a nine percent</p> <p>10 vested return assumption.</p> <p>11 Q But the participant didn't have a</p> <p>12 nine percent shot. The participant was capped</p> <p>13 at six with the interest --</p> <p>14 A In terms of interest credit, right.</p> <p>15 Q So it was always going to have to dig</p> <p>16 out of that hole.</p> <p>17 MR. RUMELD: Objection to the</p> <p>18 form.</p> <p>19 A But the more likely result was that</p> <p>20 there would be additional accruals under the</p> <p>21 plan in terms of lump sums, because interest</p> <p>22 rates were first of all lower than nine percent</p> <p>23 when we made the conversion, and as you pointed</p> <p>24 out before were trending lower.</p> <p>25 So in terms of the participant's</p>	<p style="text-align: right;">Page 311</p> <p>(18:25:56-18:26:56)</p> <p>1 GREFIG</p> <p>2 form.</p> <p>3 Q It's not increasing because they are</p> <p>4 earning new benefits?</p> <p>5 A They're not earning new annuity</p> <p>6 benefits, but they do have a larger lump sum</p> <p>7 distribution entitlement.</p> <p>8 Q But it's not a growth benefit-wise if</p> <p>9 they quit.</p> <p>10 A It's not -- we agreed to this before.</p> <p>11 It's not an annuity growth.</p> <p>12 Q Sir --</p> <p>13 A But you're asking -- you asked me --</p> <p>14 the original question you asked me was with the</p> <p>15 risk of no growth whatsoever in a cash balance</p> <p>16 amount because of the trend in interest rates.</p> <p>17 And I'm saying the trend in interest</p> <p>18 rates is more likely to produce a larger lump</p> <p>19 sum than a smaller one.</p> <p>20 Q What I'm just trying to get you to</p> <p>21 focus on is, if the participant quit the next</p> <p>22 day and let his frozen accrued sit there and</p> <p>23 interest rates fell, his pay-out from the frozen</p> <p>24 accrued would be larger, but not because he</p> <p>25 earned more money, more pension money. It would</p>
<p style="text-align: right;">Page 310</p> <p>(18:25:14-18:25:54)</p> <p>1 GREFIG</p> <p>2 entitlements, trending interest rates were going</p> <p>3 to give them a much larger lump sum. But the</p> <p>4 nine percent --</p> <p>5 Q I have to stop you there and ask you,</p> <p>6 that larger lump sum is not a growth in their</p> <p>7 benefit.</p> <p>8 MR. RUMELD: I object to the</p> <p>9 form.</p> <p>10 Q It's just a nominal change in the</p> <p>11 amount in the frozen accrued, correct?</p> <p>12 MR. RUMELD: Objection to form.</p> <p>13 Q Could you answer that yes or no? Am</p> <p>14 I right or wrong?</p> <p>15 MR. RUMELD: I object to the</p> <p>16 form.</p> <p>17 A Restate your --</p> <p>18 Q This drop in interest rates you're</p> <p>19 talking about during this period of wear-away</p> <p>20 created by the use of the nine percent may</p> <p>21 increase the nominal value of their frozen</p> <p>22 accrued but --</p> <p>23 A Right.</p> <p>24 Q -- it's just nominal, right?</p> <p>25 MR. RUMELD: I object to the</p>	<p style="text-align: right;">Page 312</p> <p>(18:27:00-18:27:44)</p> <p>1 GREFIG</p> <p>2 just have been because interest rates fell.</p> <p>3 A Right.</p> <p>4 MR. RUMELD: Objection to the</p> <p>5 form.</p> <p>6 Q What I would like to get you back to</p> <p>7 is the question of you understood at the time,</p> <p>8 based on the math, the inexorable math, that</p> <p>9 there were also people who were going to go for</p> <p>10 potentially long periods of time where they</p> <p>11 would also have a lump sum wear-away because --</p> <p>12 A No.</p> <p>13 Q No. You didn't understand that?</p> <p>14 A No.</p> <p>15 Q No idea?</p> <p>16 A No.</p> <p>17 Q So all the notes, where people were</p> <p>18 taking notes and meetings where you're</p> <p>19 describing lump sum wear-away, you didn't</p> <p>20 understand that at the time?</p> <p>21 MR. RUMELD: I object to the</p> <p>22 form.</p> <p>23 A Where -- where is the lump sum</p> <p>24 wear-away?</p> <p>25 Q How about that \$3,000 person example,</p>

<p style="text-align: right;">Page 313</p> <p>(18:27:50-18:28:54)</p> <p>1 GREFIG</p> <p>2 who ended up having all that wear-away, where</p> <p>3 they got the \$1,800. They didn't earn a dime.</p> <p>4 You agreed --</p> <p>5 A They didn't --</p> <p>6 Q Let me finish my question. You</p> <p>7 agreed they didn't earn a dime in their benefit</p> <p>8 if they took the annuity, correct?</p> <p>9 A They didn't earn a dime in their</p> <p>10 annuity benefit. That's correct.</p> <p>11 Q Take that same participant and knock</p> <p>12 them back a few years of age, so they don't get</p> <p>13 the enhancement. Remember they started off</p> <p>14 about \$6,500?</p> <p>15 A Yes.</p> <p>16 Q Well, that person would have worked</p> <p>17 all those additional years, and would not have</p> <p>18 been up to the \$11,000 that his frozen accrued</p> <p>19 was. Do you remember that?</p> <p>20 A I have vague recollections of the</p> <p>21 calculation we looked at before. I have to look</p> <p>22 at it again to -- to confirm your comment.</p> <p>23 Q But you don't deny that whatever you</p> <p>24 knew at the time, when you were in better</p> <p>25 health, younger and working at this on a</p>	<p style="text-align: right;">Page 315</p> <p>(18:29:44-18:30:42)</p> <p>1 GREFIG</p> <p>2 A Yes.</p> <p>3 Q Did anybody ever ask you, hey, do we</p> <p>4 have to tell employees that they may not be</p> <p>5 earning any benefits for a period of time?</p> <p>6 A No. I have no recollection at all of</p> <p>7 that.</p> <p>8 Q Wouldn't you think people should have</p> <p>9 been told that?</p> <p>10 MR. RUMELD: I object to the</p> <p>11 form.</p> <p>12 Q Maybe they were, but I'm just asking.</p> <p>13 Don't you think people should have known that?</p> <p>14 MR. RUMELD: I object to the</p> <p>15 form.</p> <p>16 A Yes, but what makes you believe they</p> <p>17 weren't?</p> <p>18 Q What makes you believe that they</p> <p>19 were?</p> <p>20 A That they -- what makes me believe</p> <p>21 that they might have is that -- one thing that</p> <p>22 we haven't even discussed or might have</p> <p>23 happened -- we're looking at a lot of documents.</p> <p>24 Were employee meetings held at the</p> <p>25 time this conversion took place? Did Kiley and</p>
<p style="text-align: right;">Page 314</p> <p>(18:28:56-18:29:44)</p> <p>1 GREFIG</p> <p>2 day-to-day basis, that you communicated this to</p> <p>3 Mr. Kiley and the people at Woolworth?</p> <p>4 MR. RUMELD: I object to the</p> <p>5 form.</p> <p>6 A Yes. Based upon all the</p> <p>7 documentation that we've been looking at today</p> <p>8 these are -- these are -- were considerations</p> <p>9 that were discussed.</p> <p>10 Q And you --</p> <p>11 A Issues that were discussed.</p> <p>12 Q But I'm asking you, not the document.</p> <p>13 I'm asking, you made sure that you clearly and</p> <p>14 fairly communicated this to Mr. Kiley and</p> <p>15 Woolworth, so they understood the consequence</p> <p>16 for their employees?</p> <p>17 MR. RUMELD: I object to the</p> <p>18 form.</p> <p>19 A Yes. I think so. I think that shows</p> <p>20 in the work and the analysis that we did.</p> <p>21 Q And the kind of thing you would have</p> <p>22 made sure that you did personally?</p> <p>23 A Uh-huh.</p> <p>24 MR. RUMELD: I object to the</p> <p>25 form.</p>	<p style="text-align: right;">Page 316</p> <p>(18:30:46-18:31:46)</p> <p>1 GREFIG</p> <p>2 crew go out to the stores and the distribution</p> <p>3 centers and have employee meetings? And --</p> <p>4 Q I want to ask you a question. I'm</p> <p>5 not asking if anybody -- withdrawn.</p> <p>6 I want to ask you a question. I'm</p> <p>7 not asking you to tell me anything that anybody</p> <p>8 said to you.</p> <p>9 But do you have an understanding why</p> <p>10 Foot Locker and Mercer have a joint defense</p> <p>11 agreement, where I can't find out what Mr.</p> <p>12 Rumeld talked --</p> <p>13 A Why they have a --</p> <p>14 Q Yes. Do you have an understanding?</p> <p>15 A No, I do not.</p> <p>16 Q Were you curious about that?</p> <p>17 A Not really.</p> <p>18 Q Did Mercer -- Mercer is -- you're not</p> <p>19 paying for the services of the lawyer who is</p> <p>20 sitting across the table from you, are you?</p> <p>21 A No.</p> <p>22 Q You know she doesn't work at Mercer?</p> <p>23 A Correct.</p> <p>24 Q She works for an outside law firm</p> <p>25 that sends bills to Mercer, and so Mercer has to</p>

<p style="text-align: right;">Page 317</p> <p>(18:31:50-18:32:36)</p> <p>1 GREFIG</p> <p>2 pay her? You understand that?</p> <p>3 A Yes.</p> <p>4 Q So Mercer is effectively paying her</p> <p>5 for you so you don't have to pay; is that right?</p> <p>6 A Well, I don't know going that far.</p> <p>7 She's representing me.</p> <p>8 Q You think she's doing it for nothing?</p> <p>9 A No. Mercer has retained her to</p> <p>10 represent me, as a former employee.</p> <p>11 Q And you think they're doing that</p> <p>12 purely out of the goodness of their heart?</p> <p>13 MR. RUMELD: I object to the</p> <p>14 form.</p> <p>15 Q Just what do you think? I'm not</p> <p>16 asking what anybody told you.</p> <p>17 MS. WALWORTH: Do you have a</p> <p>18 basis for --</p> <p>19 MR. GOTTESDIENER: Excuse me.</p> <p>20 MS. WALWORTH: I'm going to --</p> <p>21 I'm going to object and assert the</p> <p>22 attorney-client --</p> <p>23 MR. GOTTESDIENER: You're going</p> <p>24 to tell him not to answer that</p> <p>25 question?</p>	<p style="text-align: right;">Page 319</p> <p>(18:33:02-18:34:10)</p> <p>1 GREFIG</p> <p>2 Q Do you think Mercer is doing it</p> <p>3 selflessly out of the goodness of its heart?</p> <p>4 A I think they're doing it as the</p> <p>5 normal course of business.</p> <p>6 Q And in the course of business, so</p> <p>7 Mercer doesn't have any exposure?</p> <p>8 MR. RUMELD: I object to the</p> <p>9 form.</p> <p>10 A No, no. No, no.</p> <p>11 Q It's employee relations?</p> <p>12 A Employee relations.</p> <p>13 Q Are they giving you any other</p> <p>14 compensation, any -- deferring any expenses or</p> <p>15 anything in connection with this?</p> <p>16 A (Indicating)</p> <p>17 Q No? Your answer is no?</p> <p>18 A No.</p> <p>19 Q And with respect to -- withdrawn.</p> <p>20 The -- the -- going back to the</p> <p>21 question of the board of directors, I mean, you</p> <p>22 did understand that the plan had to be approved</p> <p>23 and amended formally in order to put this in</p> <p>24 place?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 318</p> <p>(18:32:36-18:33:02)</p> <p>1 GREFIG</p> <p>2 MS. WALWORTH: Let me finish.</p> <p>3 MR. GOTTESDIENER: Do it or</p> <p>4 not. I don't have time.</p> <p>5 MS. WALWORTH: Let me finish.</p> <p>6 Q Sir, I'm withdrawing the question.</p> <p>7 MS. WALWORTH: I'm going to</p> <p>8 instruct --</p> <p>9 MR. GOTTESDIENER: I'm not --</p> <p>10 MS. WALWORTH: Question</p> <p>11 withdrawn.</p> <p>12 Q Do you think they're doing it out of</p> <p>13 the goodness of their heart?</p> <p>14 MR. RUMELD: I object to the</p> <p>15 form.</p> <p>16 MS. WALWORTH: Objection.</p> <p>17 Don't say anything counsel has said</p> <p>18 to you.</p> <p>19 Q Answer the question.</p> <p>20 MS. WALWORTH: If you have</p> <p>21 anything to say other than that you</p> <p>22 may.</p> <p>23 THE WITNESS: Other than what?</p> <p>24 MS. WALWORTH: Whatever counsel</p> <p>25 told you.</p>	<p style="text-align: right;">Page 320</p> <p>(18:34:10-18:35:34)</p> <p>1 GREFIG</p> <p>2 Q So in -- do you remember being</p> <p>3 present for any presentations that were made to</p> <p>4 anybody such as Pat Peck, once these</p> <p>5 presentations had gotten further along during</p> <p>6 the summer of 1995?</p> <p>7 A Presentations to Pat Peck. No. I</p> <p>8 don't remember any presentations made to Pat</p> <p>9 Peck.</p> <p>10 Q How about --</p> <p>11 A I think our involvement was with --</p> <p>12 with Tom and the development of these</p> <p>13 presentations.</p> <p>14 But I don't recall being present at</p> <p>15 any presentations or was I called into any</p> <p>16 presentations as the -- you know, as the</p> <p>17 consultant. I have no recollection of that</p> <p>18 whatsoever.</p> <p>19 Q Showing you Exhibit 104.</p> <p>20 (Exhibit 104, fax, was marked</p> <p>21 for identification, as of this date.)</p> <p>22 Q This is from September 1996, after</p> <p>23 the plan went into effect.</p> <p>24 This is a fax from Tom to you and Jim</p> <p>25 Cassidy, saying "Attachment is a revised version</p>

<p style="text-align: right;">Page 321</p> <p>(18:35:36-18:37:04)</p> <p>1 GREFIG</p> <p>2 of a presentation based on our conversations</p> <p>3 today, but does not contain comments from Pat.</p> <p>4 Please let me know if you have any further</p> <p>5 comments." Is that correct?</p> <p>6 A That's what it says, yes.</p> <p>7 Q And if you look at the attachment,</p> <p>8 you see that it says "The Woolworth retirement</p> <p>9 plan, review of plan options for additional cost</p> <p>10 savings"?</p> <p>11 A Yes.</p> <p>12 Q And what can you tell me about the</p> <p>13 review of the plan to see if there could be</p> <p>14 additional cost savings yielded?</p> <p>15 A It says that the recommendations were</p> <p>16 approved by the chairman group in July 1995, the</p> <p>17 board of directors in September 1995.</p> <p>18 Q I'm not asking you to read from it,</p> <p>19 sir.</p> <p>20 What else can you tell me, if</p> <p>21 anything, about what you know about the attempt</p> <p>22 to find additional cost savings after the plan</p> <p>23 went into effect.</p> <p>24 A After the plan went into effect.</p> <p>25 Q Yes. The date of that is the fall of</p>	<p style="text-align: right;">Page 323</p> <p>(18:39:00-18:40:06)</p> <p>1 GREFIG</p> <p>2 concern about the guaranteed six percent</p> <p>3 interest on account balances.</p> <p>4 And it then has as a second and third</p> <p>5 page, if you would turn please, a letter that</p> <p>6 was signed by Jim Cassidy, and below his</p> <p>7 signature it says JC, and then there's two</p> <p>8 colons and then your initials appear there.</p> <p>9 A Right.</p> <p>10 Q And then there's ERE. Who is that,</p> <p>11 your secretary?</p> <p>12 A Secretary. Right.</p> <p>13 Q Your secretary?</p> <p>14 A No.</p> <p>15 Q And it's copied to Pat Peck; do you</p> <p>16 see that?</p> <p>17 A Yes.</p> <p>18 Q And this, as you told us, this would</p> <p>19 not have been something that Jim Cassidy</p> <p>20 associate would have sent to the manager of</p> <p>21 corporate finance at Woolworth without you</p> <p>22 specifically approving it?</p> <p>23 A They might -- see, my letters at the</p> <p>24 bottom of the letter indicate that I</p> <p>25 peer-reviewed this document.</p>
<p style="text-align: right;">Page 322</p> <p>(18:37:08-18:38:52)</p> <p>1 GREFIG</p> <p>2 1996.</p> <p>3 Do you have any information to give</p> <p>4 us on that score?</p> <p>5 A No.</p> <p>6 Q Exhibit 105.</p> <p>7 (Exhibit 105, final plan</p> <p>8 document, was marked for</p> <p>9 identification, as of this date.)</p> <p>10 Q A copy of the final plan document.</p> <p>11 You received a copy of this once it was</p> <p>12 finalized for purposes of the work you performed</p> <p>13 in connection with the plan; isn't that correct?</p> <p>14 A Well, I -- I take it as a statement,</p> <p>15 telling me this is.</p> <p>16 Q I'm making it a question. You did</p> <p>17 receive a copy of the plan document once it was</p> <p>18 finalized?</p> <p>19 A It appears so, yes.</p> <p>20 Q Exhibit 106.</p> <p>21 (Exhibit 106, document, was</p> <p>22 marked for identification, as of this</p> <p>23 date.)</p> <p>24 Q Is a multi-page exhibit that begins</p> <p>25 with a memo from Roger Farah, discussing his</p>	<p style="text-align: right;">Page 324</p> <p>(18:40:08-18:42:24)</p> <p>1 GREFIG</p> <p>2 Q Does this refresh your recollection</p> <p>3 about Foot Locker continuing after the</p> <p>4 conversion to see how it might save more money</p> <p>5 on pension benefits?</p> <p>6 A No. I don't remember any of this.</p> <p>7 Q 107 is a version of the document we</p> <p>8 looked at a couple of exhibits ago.</p> <p>9 (Exhibit 107, document, was</p> <p>10 marked for identification, as of this</p> <p>11 date.)</p> <p>12 Q Where it -- Tom Kiley is sending you</p> <p>13 and Jim Cassidy a further draft of review of</p> <p>14 plan options for additional cost savings; isn't</p> <p>15 that correct?</p> <p>16 A Yes.</p> <p>17 Q And Tom tells you, "Please let me</p> <p>18 have your comments as soon as possible. Let me</p> <p>19 know if there are any changes I should make</p> <p>20 before Monday morning's meeting." Is that</p> <p>21 right?</p> <p>22 A Yes.</p> <p>23 Q Does -- if you look in three pages</p> <p>24 the document show your handwriting, Page 3?</p> <p>25 A 2994?</p>

<p style="text-align: right;">Page 325</p> <p>(18:42:26-18:44:02)</p> <p>1 GREFIG</p> <p>2 Q Yes.</p> <p>3 A Page 3. Okay.</p> <p>4 Q Is that your handwriting?</p> <p>5 A Yes.</p> <p>6 Q And then the following page also your</p> <p>7 handwriting?</p> <p>8 A Yes.</p> <p>9 Q And the following page as well? That</p> <p>10 would be 2996?</p> <p>11 A Yes. That's my handwriting.</p> <p>12 Q Who is Evan Shapiro?</p> <p>13 A He was an actuarial technician in</p> <p>14 Stamford.</p> <p>15 Q Who is Robert Clark?</p> <p>16 A I don't know. Name doesn't even ring</p> <p>17 a bell.</p> <p>18 Q Exhibit 108.</p> <p>19 (Exhibit 108, document, was</p> <p>20 marked for identification, as of this</p> <p>21 date.)</p> <p>22 Q If you would take a look at this</p> <p>23 second page, and tell me if that's your</p> <p>24 handwriting.</p> <p>25 A Yes, it is.</p>	<p style="text-align: right;">Page 327</p> <p>(18:45:58-18:47:40)</p> <p>1 GREFIG</p> <p>2 A Well --</p> <p>3 Q For the record, it's called a Bates</p> <p>4 stamp.</p> <p>5 A Bates stamp. Okay.</p> <p>6 Q It means that it was produced from</p> <p>7 Mercer's files.</p> <p>8 A Files.</p> <p>9 Q But beyond that, is there anything</p> <p>10 that you see there in the notes, in the</p> <p>11 presentation, in the handwriting that's on the</p> <p>12 presentation that allows you to tell us anything</p> <p>13 about who may have generated that document?</p> <p>14 A The handwriting is mine.</p> <p>15 Q If you look at Page 3791.</p> <p>16 A Okay.</p> <p>17 Q Can you see that there?</p> <p>18 A Yes.</p> <p>19 Q You would agree that this is</p> <p>20 illustrating a lump sum wear-away we were</p> <p>21 discussing before; isn't that right?</p> <p>22 A The MN I presume is a minimum -- a</p> <p>23 minimum benefit lump sum calculation. Okay.</p> <p>24 Which is greater than the cash balance</p> <p>25 conversion. Okay.</p>
<p style="text-align: right;">Page 326</p> <p>(18:44:02-18:45:56)</p> <p>1 GREFIG</p> <p>2 Q Does it appear to you that this is --</p> <p>3 at the top it says employee contributions?</p> <p>4 A Yes.</p> <p>5 Q And is this a listing of names</p> <p>6 underneath Pete, Rita, Evan, Carol, Tom?</p> <p>7 A Yes.</p> <p>8 Q Who's after Tom?</p> <p>9 A Marion.</p> <p>10 Q Then Bob. And then --</p> <p>11 A It looks like Houston, H-O-U-S-T-O-N.</p> <p>12 Q And from your note-taking practices</p> <p>13 and the context, does it appear to you that this</p> <p>14 was a meeting that you had with those folks, and</p> <p>15 you were in attendance and took notes?</p> <p>16 A It appears so.</p> <p>17 Q Can you look briefly at the</p> <p>18 presentation that follows, entitled cash balance</p> <p>19 conversion, October 17, 1996, and tell me if you</p> <p>20 know who generated that document?</p> <p>21 A Well, the note on the bottom of the</p> <p>22 page says Mercer. You obtained this -- that</p> <p>23 means you obtained this from Mercer files,</p> <p>24 right? Isn't that what that means?</p> <p>25 Q When you say note --</p>	<p style="text-align: right;">Page 328</p> <p>(18:47:42-18:48:30)</p> <p>1 GREFIG</p> <p>2 Q So you agree with me, right?</p> <p>3 A We end up two different values.</p> <p>4 Q It illustrates the lump sum wear-away</p> <p>5 we were discussing earlier, right?</p> <p>6 MR. RUMELD: I object to form.</p> <p>7 A It illustrates the difference in the</p> <p>8 cash balance versus the minimum distribution at</p> <p>9 the time of conversion, yes.</p> <p>10 Q It illustrates that that person</p> <p>11 worked for a time and actually earned no new</p> <p>12 benefit?</p> <p>13 A No new annuity benefit, yes.</p> <p>14 Q No lump sum benefit either, right?</p> <p>15 MR. RUMELD: Objection to the</p> <p>16 form.</p> <p>17 A No, because a year later the minimum</p> <p>18 benefit value of 2,201 is going to increase</p> <p>19 because they're one year closer to retirement</p> <p>20 age.</p> <p>21 Q But that is not a function of earning</p> <p>22 anything. That's just aging.</p> <p>23 A That's correct.</p> <p>24 Q You agree with that, correct?</p> <p>25 A Yes.</p>

<p style="text-align: right;">Page 329</p> <p>(18:48:30-18:49:10)</p> <p>1 GREFIG</p> <p>2 Q So it does illustrate lump sum</p> <p>3 wear-away. It doesn't --</p> <p>4 MR. RUMELD: I object to the</p> <p>5 form.</p> <p>6 Q They're not earning anything.</p> <p>7 MR. RUMELD: I object to the</p> <p>8 form.</p> <p>9 A They're not earning an annuity</p> <p>10 benefit.</p> <p>11 Q They're not earning a lump sum</p> <p>12 benefit other than by aging, which is not</p> <p>13 earning anything.</p> <p>14 A Well, we could -- you know, that's --</p> <p>15 we could argue about that.</p> <p>16 Q What is the possible argument about</p> <p>17 that, sir?</p> <p>18 MR. RUMELD: I object to the</p> <p>19 form.</p> <p>20 A The -- does the employee --</p> <p>21 Q I withdraw the question. I withdraw</p> <p>22 the question. 109.</p> <p>23 (Exhibit 109, sensitivity</p> <p>24 analysis, was marked for</p> <p>25 identification, as of this date.)</p>	<p style="text-align: right;">Page 331</p> <p>(18:50:50-18:51:50)</p> <p>1 GREFIG</p> <p>2 don't recall GATT -- whether GATT dictated a</p> <p>3 mortality table.</p> <p>4 I gather from some of the other</p> <p>5 documents we looked at that it was reference to</p> <p>6 GATT interest and mortality. So this is</p> <p>7 probably based upon a GATT mortality.</p> <p>8 Q You were sending that to him then</p> <p>9 why?</p> <p>10 A Sending that to him.</p> <p>11 Q Why?</p> <p>12 A He probably asked for it.</p> <p>13 Q Exhibit 111.</p> <p>14 (Exhibit 111, document dated</p> <p>15 11/21/96, was marked for</p> <p>16 identification, as of this date.)</p> <p>17 Q Is dated November 21, 1996. And it's</p> <p>18 to Janet from Jim. That came out of Mercer's</p> <p>19 files, and appears to have your handwritten</p> <p>20 graph and circle on the front page.</p> <p>21 A Yes.</p> <p>22 Q And you're the Jim who's referred to</p> <p>23 here, right?</p> <p>24 MR. RUMELD: Objection to the</p> <p>25 form.</p>
<p style="text-align: right;">Page 330</p> <p>(18:49:10-18:50:38)</p> <p>1 GREFIG</p> <p>2 Q Is a sensitivity analysis document</p> <p>3 that Tom Kiley faxed you on October 31, 1996,</p> <p>4 correct?</p> <p>5 A Correct. The -- getting back to</p> <p>6 the -- if I may, to 108, the question that you</p> <p>7 asked me, who generated this?</p> <p>8 Q Do you know --</p> <p>9 A You asked me who Robert Clark was,</p> <p>10 and I don't know who Robert Clark is, but it</p> <p>11 would appear to me that he's consulting</p> <p>12 maintenance international. He may have been</p> <p>13 retained by Woolworth to generate this document.</p> <p>14 Q Okay. Other than that --</p> <p>15 A Other than that...</p> <p>16 Q Other than that. Exhibit 110 is from</p> <p>17 you to Tom Kiley.</p> <p>18 (Exhibit 110, document, was</p> <p>19 marked for identification, as of this</p> <p>20 date.)</p> <p>21 Q This one here, sir. Can you tell me</p> <p>22 what you're sending Mr. Kiley on November 1,</p> <p>23 1996?</p> <p>24 A These are the immediate and deferred</p> <p>25 GATT annuities at 6.06 and 9 percent. And I</p>	<p style="text-align: right;">Page 332</p> <p>(18:51:50-18:54:32)</p> <p>1 GREFIG</p> <p>2 A Let me read this. Given the nature</p> <p>3 of the text, I would conclude that I am the Jim</p> <p>4 at the end of this memo, yes.</p> <p>5 Q Who's Janet?</p> <p>6 A Janet is in-house counsel of Mercer.</p> <p>7 Q Exhibit 112.</p> <p>8 (Exhibit 112, document, was</p> <p>9 marked for identification, as of this</p> <p>10 date.)</p> <p>11 Q Can you tell me what that is? It's</p> <p>12 entitled calculations, dot, dot, background, and</p> <p>13 it has a date at the top with a fax header of</p> <p>14 January 10, 1997, with post-it notes that -- at</p> <p>15 least one of them seems to be directed to you</p> <p>16 from Tom Kiley.</p> <p>17 A There's that Houston name again or</p> <p>18 Houston name.</p> <p>19 Q Right. But I'm asking what is the</p> <p>20 document, not -- not about more. Could I try it</p> <p>21 this way?</p> <p>22 A A piece of this rings a bell. For</p> <p>23 valuation purposes, when we got -- you asked</p> <p>24 before about a valuation tape.</p> <p>25 When we got evaluation tape from</p>

<p style="text-align: right;">Page 333</p> <p>(18:54:34-18:56:02)</p> <p>1 GREFIG</p> <p>2 Woolworth, when they ran their systems to</p> <p>3 prepare that tape, they had to reassemble all of</p> <p>4 the accrued -- all of the benefit accruals from</p> <p>5 the day the employee was employed up until the</p> <p>6 end of the prior plan year, and they did that</p> <p>7 every year that they ran a tape.</p> <p>8 So where it says date -- every time a</p> <p>9 calculation, estimated or actual, is run, the</p> <p>10 calculation must start back at time zero and</p> <p>11 calculate every step going forward. That I</p> <p>12 remember. That was --</p> <p>13 Q Did Mercer write an administrator's</p> <p>14 manual for Foot Locker, Woolworth to administer</p> <p>15 the cash balance plan, do the calculations in</p> <p>16 house?</p> <p>17 A I don't think so. I mean, the</p> <p>18 proposal we looked at earlier, even though --</p> <p>19 still not sure whether it's administrative. I</p> <p>20 don't recall any manual being prepared for</p> <p>21 Woolworth.</p> <p>22 MR. GOTTESDIENER: Thank you</p> <p>23 for your testimony. I'm out of time.</p> <p>24 A And this -- I don't know what it is.</p> <p>25 I mean, as I say, this in here or what the rest</p>	<p style="text-align: right;">Page 335</p> <p>(18:57:52-18:59:24)</p> <p>1 GREFIG</p> <p>2 A Well, the 1/1/99 one is the one that</p> <p>3 has Doug Tinney's signature on that. Let me</p> <p>4 just confirm that.</p> <p>5 I'm sorry. Ray Feeney. The 1/1/99</p> <p>6 report was signed by Ray Feeney, who was a New</p> <p>7 York office employee.</p> <p>8 Q And if you were still responsible for</p> <p>9 this report, would you have signed it?</p> <p>10 A For the '99 report?</p> <p>11 Q Yes.</p> <p>12 A I haven't had an opportunity to</p> <p>13 review what was in there. I haven't looked at</p> <p>14 the actuarial assumptions. So without having an</p> <p>15 opportunity to review at least these</p> <p>16 assumptions.</p> <p>17 Q You wouldn't have been working on it</p> <p>18 after you retired, right?</p> <p>19 A No, no.</p> <p>20 Q You testified a little earlier that</p> <p>21 Mr. Kiley was good at math?</p> <p>22 A (Indicating)</p> <p>23 Q He wasn't able to do cost projections</p> <p>24 by himself, was he?</p> <p>25 MR. GOTTESDIENER: Objection.</p>
<p style="text-align: right;">Page 334</p> <p>(18:56:06-18:57:50)</p> <p>1 GREFIG</p> <p>2 of it is. I don't know, other than another</p> <p>3 summary by somebody.</p> <p>4 MR. RUMELD: Mr. Grefig, if you</p> <p>5 could hang in there, I just have one</p> <p>6 or two questions.</p> <p>7 CROSS-EXAMINATION BY MR. RUMELD:</p> <p>8 Q The precise date of your retirement</p> <p>9 was when?</p> <p>10 A The last day of August 1998.</p> <p>11 Q And the last valuation report for</p> <p>12 Foot Locker or Woolworth could have been</p> <p>13 involved with would be what, for which year?</p> <p>14 A Practically speaking I would have</p> <p>15 expected it to be 1/1/98, but I thought I saw a</p> <p>16 document here that had a signature from Doug</p> <p>17 Tinney for the '98 valuation. You know, it</p> <p>18 all -- it all -- that's '99.</p> <p>19 Q Which exhibit are you looking?</p> <p>20 A This happens to be '99, but if we</p> <p>21 look at the actuarial report for 1998 we could</p> <p>22 verify whether that was done while I was still</p> <p>23 employed. I don't seem to have the 1998 report.</p> <p>24 Q You know you didn't review the one</p> <p>25 from 1/1/99?</p>	<p style="text-align: right;">Page 336</p> <p>(18:59:26-19:00:28)</p> <p>1 GREFIG</p> <p>2 THE WITNESS: Who said that?</p> <p>3 MR. GOTTESDIENER: I said that.</p> <p>4 THE WITNESS: Oh.</p> <p>5 A He -- he would be able to do some</p> <p>6 cost projections, but not actuarial cost</p> <p>7 projections. Benefit illustrations, but not</p> <p>8 cost projections. No.</p> <p>9 Q So if there were cost projections in</p> <p>10 the documentation, they would have been prepared</p> <p>11 by you or someone at Mercer?</p> <p>12 MR. GOTTESDIENER: Objection.</p> <p>13 A Yes.</p> <p>14 MR. RUMELD: I have nothing</p> <p>15 further. Thank you.</p> <p>16 MS. WALWORTH: All done? This</p> <p>17 deposition is concluded.</p> <p>18 THE VIDEOGRAPHER: This</p> <p>19 concludes Tape Number 6, also</p> <p>20 concludes today's deposition.</p> <p>21 The time is 6:57 p.m. We're</p> <p>22 off the record. Total time for the</p> <p>23 Plaintiffs is seven hours and for the</p> <p>24 Defendant is three minutes.</p> <p>25</p>

Page 337

1 A C K N O W L E D G E M E N T
2
3 S T A T E O F)
4 :SS
5 C O U N T Y O F)
6
7 I, JAMES GREFIG, hereby certify that I have
8 read the transcript of my testimony taken under
9 oath in my deposition of March 27, 2012; that
10 the transcript is a true, complete and correct
11 record of my testimony, and that the answers on
12 the record as given by me are true and correct.
13
14 _____
15 JAMES GREFIG
16
17 Signed and subscribed to before me
18 this _____ day of _____, 2012
19
20 _____
21 Notary Public, State of _____
22
23
24
25

Page 338

1 C E R T I F I C A T E
2
3 S T A T E O F N E W Y O R K)
4 :SS
5 C O U N T Y O F N E W Y O R K)
6
7 I, RONALD A. MARX, a Notary Public
8 within and for the State of New York, do hereby
9 certify:
10 That JAMES GREFIG, the witness whose
11 deposition is hereinbefore set forth, was duly
12 sworn by me and that such deposition is a true
13 record of the testimony given by such witness.
14 I further certify that I am not
15 related to any of the parties to this action by
16 blood or marriage; and that I am in no way
17 interested in the outcome of this matter.
18 IN WITNESS WHEREOF, I have hereunto
19 set my hand this 30th day of March, 2012.
20
21
22
23 _____
24 RONALD A. MARX
25

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1 ***ERRATA***
2 ELLEN GRAUER COURT REPORTING CO. LLC
3 126 East 56th Street, Fifth Floor
4 New York, New York 10022
5 212-750-6434
6 NAME OF CASE: Osberg vs. Foot Locker
7 DATE OF DEPOSITION: March 27, 2012
8 NAME OF WITNESS: James Grefig
9
10 PAGE LINE FROM TO REASON
11 ____|____|_____|_____|_____
12 ____|____|_____|_____|_____
13 ____|____|_____|_____|_____
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19 ____|____|_____|_____|_____
20 ____|____|_____|_____|_____
21 ____|____|_____|_____|_____
22 Subscribed and sworn before me
23 this ____ day of _____, 20__.
24 _____
25 (Notary Public) My Commission Expires: